TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~572~~ 118

JOHN K. TIFFANY, SURVIVING TRUSTEE OF JOHN F. DARBY, BANKRUPT, APPELLANT,

vs.

JAMES H. LUCAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

FILED OCTOBER 9, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 572.

JOHN K. TIFFANY, SURVIVING TRUSTEE OF JOHN F. DARBY, BANKRUPT, APPELLANT,

vs.

JAMES H. LUCAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

INDEX.

PROCEEDINGS.

	Original.	Print.
Bill of complaint	2	1
Exhibit A, referred to in said bill	6	4
Order for subpœna	11	6
Subpœna	11	6
Return of marshal on subpœna	12	7
Answer filed	12	7
Answer of defendant	12	7
Replication filed	19	11
Replication of complainants	19	11
Cause heard in part and hearing continued	20	12
Cause further heard and continued	21	12
Do	21	12
Do	22	13
Cause taken under advisement	22	13
Death of one of the complainants suggested	22	13
Order that suit proceed in name of remaining complainant	23	13
Decree dismissing the bill	23	14
Motion for rehearing filed	24	14
Motion for rehearing withdrawn	24	14
Appeal allowed and bond approved	24	15
Transcript of record and proceedings ordered	24	15
Memorandum of proceedings to be included in transcript	25	15
Bond of appeal	39	23

EVIDENCE FOR COMPLAINANTS READ UPON THE HEARING OF THE CAUSE.

	Original.	Print.
Deposition of C. N. Newcomb	40	23
A. R. Newcomb	44	25
W. W. Ivory	50	28
John S. Wilson	55	31
Alexander Whillidin	60	34
George Nugent	66	37
M. B. O'Reilly	71	39
George Kehr	73	40
Francis Vallé	81	44
John F. Darby	90	49
Exhibit A, attached to same	137	73
Exhibit B, attached to same	138	73
H. W. Leffingwell	439	74
Marcus A. Wolff	148	79
Edward Wyman	154	82
Green Erskine	160	85
Trusten Polk	178	95
J. A. Sumner	181	96
J. H. Britton	184	98
A deed of John F. Darby, F. Vallé, and A. R. Newcomb	199	106
John F. Darby and wife to Moss Prewett	205	109
release from Moss Prewett to John F. Darby	209	111
J. F. Darby and wife to Moss Prewett	212	112
trust of J. F. Darby and wife to Campbell and Dickson, trustees of E. S. Willing	216	115
Another deed of the same parties to the same parties	223	119
A deed of J. F. Darby and wife to Charles K. Dickson, trustee of A. H. Henderson's estate	227	121
trust of J. F. Darby and wife to C. K. Dickson, trustee of Walter H. Darby	231	124
J. F. Darby and wife to Charles K. Dickson, trustee of James H. Britton	235	126
J. F. Darby and wife to Charles K. Dickson, trustee of James H. Britton	239	128
J. F. Darby and wife to Francis Vallé, trustee of William F. Ferguson	242	130
J. H. Darby and wife to James H. Lucas	246	132
J. F. Darby and wife to Moss Prewett	246	132
J. F. Darby and wife to Francis Vallé, trustee of Caswell F. Darby	250	134
J. F. Darby and wife to Francis Vallé, trustee of W. F. Furguson	254	136
J. F. Darby and wife to William Weightman's trustee	258	138
J. F. Darby and wife to trustees of Thomas H. Powers	263	141
J. F. Darby and wife to Alexander Duncan's trustees	269	145
Another deed of J. F. Darby and wife to Alexander Duncan's trustees	272	146

EVIDENCE FOR DEFENDANT READ UPON THE HEARING OF THE CAUSE.

Deposition of James H. Lucas	275	148
Exhibit A, in said deposition	289	155
B, in said deposition	289	155
C, in said deposition	290	156
D, in said deposition	290	156

	Original.	Print.
Exhibit E, in said deposition	290	157
Deposition of John G. Priest	291	157
Copy of deed of Centenary Church to John J. Roe	295	159
Deposition of Sullivan Blood	299	161
Certificate of clerk of district court	318	171
PROCEEDINGS IN CIRCUIT COURT.		
Hearing of cause and submitted	319	171
Final decree	319	172
Appeal allowed and bond approved	320	172
Bond of appeal	321	172
Clerk's certificate to transcript	323	173

1 UNITED STATES OF AMERICA,
Districts of Missouri:

In the circuit court of the United States for the districts of Missouri.

Pleas before the circuit court of the United States for the districts of Missouri. April term, 1871.

JOHN K. TIFFANY, SURVIVING TRUSTEE IN BANKRUPTCY of John F. Darby, bankrupt, complainant and appellant,
against
JAMES H. LUCAS, DEFENDANT AND APPELLEE.

Appeal from the district court of the United States for the eastern district of Missouri.

Be it remembered that, on the thirtieth day of March, in the year of our Lord eighteen hundred and seventy-one, there was filed in the office of the clerk of said circuit court a transcript of the record and proceedings had in the district court of the United States for the eastern district of Missouri, in the above-entitled cause, which transcript is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of the United States for the eastern district of Missouri.

ANDREW PARK AND JOHN K. TIFFANY, TRUSTEES in bankruptcy of John F. Darby, bankrupt, complainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

2 Be it remembered that, on the twentieth day of January, in the year of our Lord eighteen hundred and seventy, there was filed in the office of the clerk of the district court of the United States for the eastern district of Missouri, a bill in equity in the above-entitled cause, which bill is in the words and figures following, to wit:

Bill.

In the district court of the United States for the eastern district of Missouri.

ANDREW PARK AND JOHN K. TIFFANY, TRUSTEES of the estate of John F. Darby, bankrupt, plaintiffs,
against
JAMES H. LUCAS, DEFENDANT. } In bankruptcy.

To the honorable Samuel Treat, judge of the district court of the United States for the eastern district of Missouri:

Humbly complaining unto your honor, your orators, Andrew Park and John K. Tiffany, trustees of the estate of John F. Darby, bankrupt, against James H. Lucas, esquire, of the city and county of St. Louis,

and State of Missouri, and district aforesaid, show unto your honor that the said John F. Darby has, for a long time, and for more than six months previous to his adjudication as a bankrupt, been a resident of the city and county of Saint Louis, and State of Missouri, and district aforesaid, and has, for many years, been doing business in said city as a private banker; that, on the 17th day of June, A. D. 1869, the said John F. Darby, being forced by his creditors to elect whether he would voluntarily present his petition of bankruptcy to this honorable court under the provisions of the act below cited, or be adjudicated a bankrupt upon the petition of his said creditors, the said John F.
3 Darby having, before that time, committed acts of bankruptcy, did accordingly, on the first day of July, A. D. 1869, present unto this honorable court his petition stating his inability to pay his debts, his willingness to surrender his property for the benefit of his creditors, and praying to be adjudicated a bankrupt, according to the provisions of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867; that this honorable court thereupon, upon the twelfth day of July, A. D. 1869, did make an order referring the matter to Lucien Eaton, esquire, one of the registers of the said court, who thereupon proceeded to hear the proof, and upon the twelfth day of July, A. D. 1869, the said John F. Darby was duly declared and adjudicated a bankrupt according to law.

That, at a meeting of the creditors of the said John F. Darby, bankrupt, duly held upon the 27th (twenty-seventh) of July, A. D. 1869, the said Andrew Park was duly chosen assignee of the said bankrupt, and accepted the appointment; that, upon the second day of November, A. D. 1869, upon the petition of three-fourths in value of all the creditors of the said bankrupt who had proved their claims, this honorable court did order the said assignee, Andrew Park, to convey all his interest in the property of the said John F. Darby, bankrupt, to the said Andrew Park and John K. Tiffany, trustees, and thereupon the said Andrew Park did make and record his said deed to that effect, and the said Andrew Park and John K. Tiffany did, thereupon, enter upon the discharge of their duties as such trustees under the order and approval of this honorable court.

And your orators further say that the said John F. Darby, being in fact insolvent and in contemplation of insolvency, and within six months before the filing of his said petition, to wit, on or about the
4 24th day of April, A. D. 1869, did, not in the ordinary and usual course of his business, make and execute his certain warranty deed, dated upon the said 24th day of April, 1869, together with Mary M. Darby, his wife, to the said James H. Lucas, herein complained of by your orators, and thereby did attempt to sell, transfer, and convey to the said James H. Lucas a certain lot of ground, situate and lying and being in block numbered one hundred and nineteen, of the said city of St. Louis, containing seventy-five feet front on Fifth street, by one hundred and twenty-seven feet *feet* six inches, more or less, westwardly, in depth, to an alley, bounded on the north by Olive street, on the east by Fifth street, on the south by property now or formerly owned by Alexander, and on the west by said alley, and more particularly described in said deed, a copy of which is here shown to the court, hereunto annexed, and marked "Exhibit A," to which reference is hereby made for more particular description thereof; and the same is hereby made a part and parcel of this bill, as if more fully set out at length herein, for a consideration of the sum of two hundred thousand

dollars expressed in said deed, to be in cash, paid in hand to the said John F. Darby, bankrupt, but being in fact, as in said deed is fully set forth, in large part composed and made up of the assumption, by the said James H. Lucas, of certain promissory notes, described to be three principal promissory notes of sixty, fifty, and forty thousand dollars, respectively, with certain interest notes thereon, secured by three several deeds of trust upon said property, as more particularly set forth in said deed above shown to the court and made a part hereof; all which said notes the said James H. Lucas did bind himself and covenant to pay, as part of the consideration aforesaid, signing and executing the said deed of indenture with the said John F. Darby, bankrupt, and Mary his wife.

5 Now, your orators further charge that, at the time the said deed was made, executed, and delivered, the said John F. Darby was in fact insolvent, and acting in contemplation of insolvency; that the said James H. Lucas herein complained of had *had* reasonable cause to believe the said John F. Darby to be insolvent, and to be acting in contemplation of insolvency; and the said James H. Lucas had reasonable cause to believe that the said transfer was made with a view to defeat the object of, and to impair, hinder, impede, and delay the operation and effect of, and to evade the provisions of, the act entitled as above set forth.

And your orators further charge that the property conveyed, or attempted to be conveyed by the said deed, was worth more than the sum of three hundred thousand dollars, and was sold by the said John F. Darby for much less than its true value; and that the said James H. Lucas, knowing of the insolvency and needs of the said John F. Darby, well knew that the said property was well worth to the creditors of the said John F. Darby more than the sum of three hundred thousand dollars.

And your orators further charge that the said James H. Lucas, knowing of the insolvency aforesaid, well knew that certain of the said interest notes were shortly due and payable by the said Darby, and that the said Darby had no funds to pay the same, and that the said Lucas deducted from the cash-balance due said Darby, after deducting the said principal notes, the amount of the said interest notes about falling due, lest the said Darby should fail to pay the same. All which actings and doings are contrary to the provisions of the said act, entitled "An act to establish," &c., and tend to the wrong and injury of your orators and the creditors of the said Darby in the premises.

6 Therefore your orators pray that the said James H. Lucas may be compelled to answer the premises, without oath, and that the said indenture, of the said 24th day of April, A. D. 1869, may be declared void, as fraudulent against your orators and the creditors of the said bankrupt, and in fraud of the act aforesaid, and that the title to the property described in said deed be decreed to be in the said trustees for the uses and purposes of their said trust, and that your orators may have such other and further relief in the premises as unto your honor shall seem meet. And your orators shall ever pray, &c.

POLK, CAUSEY & DRAKE,
SAMUEL KNOX,
GLOVER & SHEPLEY,
For Trustees.

Exhibit "A," referred to in bill.

And said "Exhibit A," referred to in said bill, is in the words and figures following, to wit:

[U. S. stamp, $100 00. J. F. D., 24 April, '69.]

This deed, made this twenty-fourth day of April, in the year of our Lord eighteen hundred and sixty-nine, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, of the one part, and James H. Lucas, of the same city, county, and State, of the second part, witnesseth:

That the said party of the first part for and in consideration of two hundred thousand dollars, to them (cash in hand) well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, they, the said party of the first part, have granted, sold, transferred, enfeoffed, conveyed, and confirmed, and by these presents do grant, sell, transfer, enfeoff, convey, and confirm unto the said party of the second part, a certain lot or piece of ground, situated,
7 lying, and being in block numbered one hundred and sixteen, in the city of St. Louis, containing seventy-five feet in front on Fifth street, by one hundred and twenty-seven feet six inches, more or less, westwardly in depth to the alley, bounded on the east by Fifth street, on the north by Olive street, on the west by the alley, and on the south by property formerly owned by Bernard Pratte, deceased, being the same property which was acquired by John F. Darby from P. Dexter Tiffany and Hannah K. Tiffany, his wife, by deed dated the sixteenth day of January, eighteen hundred and forty-nine, and recorded in the recorder's office of St. Louis County, in book W No. 4, pages 479 & '80:

To have and to hold the same, together with all the buildings and improvements thereon, and all the rights, privileges, and appurtenances thereto pertaining, unto him the said party of the second part, and to his heirs and assigns forever.

It being well understood by and between the parties to this deed that there is now subsisting and outstanding incumbrance on said property hereby intended to be conveyed; and this conveyance is made subject to said incumbrance, as follows, to wit: One promissory note dated the 28th day of October, 1868, payable five years after date, for the sum of sixty thousand dollars; and nine notes, all dated the 28th day of October, 1868, each for the sum of twenty-four hundred dollars—one payable twelve months after date, one eighteen months after date, one two years after date, one two years and six months after date, one three years after date, one three years and six months after date, one four years after date, one four years and six months after date, and one five years after date. Also, one other promissory note for the sum of fifty thousand dollars, payable five years after date; and nine promissory notes,
8 each for the sum of two thousand dollars—one payable twelve months after date, one eighteen months after date, one two years after date, one two years and six months after date, one payable three years after date, one payable three years and six months after date, one four years after date, one four years and six months after date, and one five years after date. Also, one other promissory note for the sum of forty thousand dollars, payable five years after date; and nine other promissory notes, each for the sum of sixteen hundred dollars—one payable in twelve months after date, one eighteen months after date, one two years after date, one two years and six months after date, one three

years after date, one three years and six months after date, one four years after date, one four years and six months after date, and one five years after date. Each and every one of said promissory notes above described all bearing date the 28th day of October, 1868, and all made by John F. Darby, in favor of the American Life Insurance Company of Philadelphia, where notes are all made payable; and all of said notes are secured by three separate deeds of trust, made and executed by said John F. Darby and wife, on three different pieces or parcels of ground included in the lot or piece of ground hereinbefore described, and now intended to be conveyed in this present deed.

Each and every one of said promissory notes hereinbefore described, he, the said James H. Lucas, the vender, assumes and binds himself to pay off, discharge, and satisfy when they become due, as part of the consideration and purchase-money due from him for the lot or piece of ground hereinbefore described, and for the payment of which said promissory notes the lot of ground hereby conveyed remains pledged, mortgaged and bound. And when he, the said James H. Lucas, shall
9 have fully paid and satisfied said promissory notes, he hereby binds and obligates himself to deliver the same over to him, the said John F. Darby, or his legal representatives; the said James H. Lucas also binds and obligates himself to observe, perform, and fulfill all the covenants and agreements in the said deed of trust so made and executed by the said John F. Darby for the use and benefit of the American Life Insurance Company, to be kept and performed by the John F. Darby.

And the said John F. Darby for himself, his heirs, executors, and administrators, hereby covenants and agrees to and with the said James H. Lucas, his heirs and assigns, that he will forever warrant and defend the above-described premises unto him the said James H. Lucas, his heirs and assigns, against the lawful claim or claims of all persons whatsoever, except the incumbrances hereinbefore stated in this deed.

In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
JAMES H. LUCAS. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN F. GIBBONS.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this twenty-sixth day of April, A. D. eighteen hundred and sixty-nine, before me the undersigned notary public within and for said county and State, duly commissioned and qualified, came John F. Darby and Mary M. Darby, his wife, and James Lucas, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. And the said Mary M. Darby, having been by me
10 first made acquainted with the contents of the said instrument, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my

official seal, at office in the city of St. Louis, the day and year last aforesaid.

[SEAL.] JOHN F. GIBBONS,
Notary Public St. Louis County, Mo.

Filed and recorded April 26, 1869.

JULIUS CONRAD,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss :

I, the undersigned recorder for said county, certify that the foregoing is a true copy of an instrument in writing, executed by John F. Darby et al., together with the acknowledgment, date of filing and recording thereof, as the same remains on record in my office, in book 375, page 575.

Witness my hand and official seal this 8th January, A. D. 1870.

JULIUS CONRAD, [SEAL.]
Recorder.

[5-c. rev. stamp, cancelled.]

On which bill the following proceedings were had in said district court on the twentieth day of January, A. D. 1870, to wit:

ANDREW PARK & JOHN K. TIFFANY, TRUSTEES in bankruptcy of John F. Darby, bankrupt, complainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

11 *Order for subpœna.*

AT SAINT LOUIS, IN SAID DISTRICT,
Thursday, 20th January, A. D. 1870.

This day come the said complainants, by their solicitors, and file their bill of complaint against James H. Lucas to annul a certain deed made to him by said John F. Darby, bankrupt. Thereupon, on motion of said complainants, by their solicitors, it is ordered by the court that a subpœna in chancery issue in this cause against the said James H. Lucas, returnable on the tenth day of February next.

And on the twenty-first day of said month of January, A. D. 1870, there was issued, in accordance with the foregoing order, a subpœna in chancery, which subpœna is in the words and figures following, to wit:

Subpœna.

Eastern district of Missouri.

The President of the United States of America to James H. Lucas, greeting:

You are hereby commanded to be and appear at the district court of the United States for the eastern district of Missouri, at its rooms in the custom-house building, in the city of St. Louis, in said district, on the tenth day of February, A. D. eighteen hnndred and seventy, at eleven o'clock a. m. of said day, then and there to answer the bill of complaint of Andrew Park and John K. Tiffany, trustees in bankruptcy of John F. Darby, bankrupt, filed on the twentieth day of January, A. D. 1870. Hereof fail not.

Witness the honorable Samuel Treat, judge of the district court of the United States for the eastern district of Missouri, the twenty-first day of January, A. D. 1870. Issued at St. Louis, in said district, under the seal of said court, the day and year last above written.

[SEAL.] BEN. F. HICKMAN,
Clerk of said District Court.

12 MEMO.—The defendant to enter his appearance and file his answer in this cause on or before said day, otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Clerk.*

On which subpœna the marshal of the United States for said district made the following return, to wit:

Return of marshal on subpœna.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by delivering a copy of the writ, together with a copy of the bill, to the within-named James H. Lucas, at St. Louis, in said district, January 22nd, 1870.

Marshal's fees: 1 service, $2 00; travel 2 miles, 10.

C. A. NEWCOMB,
U. S. Marshal E. Dist. of Mo.
By J. SAUER, *Deputy.*

And afterwards, to wit, on the third day of February, A. D. 1870, the following further proceedings were had in said district court in said cause, to wit:

ANDREW PARK ET AL., TRUSTEES, &C., COMplainants, *against* JAMES H. LUCAS, DEFENDANT. } In chancery.

Answer filed.

AT ST. LOUIS, IN SAID DISTRICT,
Thursday, 3d February, A. D. 1870.

This day comes the said defendant, by his solicitor, and files his answer to the bill of complainants heretofore filed herein against him.

And the said answer filed on said last-mentioned day is in the words and figures following, to wit:

Answer of defendant.

In the district court of the United States for the eastern district of Missouri. In bankruptcy. February term, 1870.

JAMES H. LUCAS, DEFENDANT, *ats.* ANDREW PARK AND JOHN K. TIFFANY, TRUSTees of the estate of John F. Darby, plaintiffs.

13 The answer of James H. Lucas to the bill of complaint of Andrew Park and John K. Tiffany, trustees of the estate of John F. Darby, a bankrupt, complainants.

This respondent, saving to himself all manner of exceptions to the said bill of complaint, for answer thereto, saith: That he believes it

to be true that the said John F. Darby was declared and adjudicated a bankrupt some time during the year 1869, and after the first day of June, 1869, the particular time and circumstances thereof, this respondent does not know, otherwise than by the allegations of said bill of complaint, and, so far as the same may be material, this respondent requires that they be proved by the production of the record. He also believes it to be true that the plaintiffs were duly appointed and constituted trustees of the said John F. Darby's estate. He further admits that, in the month of April, 1869, he, the said respondent, purchased from the said John F. Darby, the real estate and premises in the bill of complaint described, the deed therefor, executed by the said John F. Darby and wife, being dated April 24th, 1869, and the consummation of the contract by payment of the consideration and delivery of the deed taking place on the 26th April, 1869.

This respondent, further answering, says that subsequent disclosures and information have led him to the conclusion that the said John F. Darby was, at the time of making said deed, in insolvent circumstances, but at the time when the said deed was made and delivered, and the said consideration paid, he, the said James H. Lucas, had no suspicion or belief that the said John F. Darby was in failing or insolvent circumstances, or in contemplation of bankruptcy or insolvency; nor had
14 the said James H. Lucas any reason to believe the said John F Darby to be insolvent, or to be acting in contemplation of insolvency at the time when the said sale and conveyance were effected, nor until a long time thereafter. On the contrary thereof, the said James H. Lucas, had been for many years acquainted with the said John F. Darby as a banker, and the owner of valuable real estate in and about the city of St. Louis, and considered him a wealthy man. He knew that the said John F. Darby had incumbered some of his real estate in furtherance of his business as a banker, but regarded such action on the part of the said Darby as indicating merely his, the said Darby's, belief that the profits he could make as banker out of the money borrowed, would exceed the interest he would pay therefor. That the said real estate in the bill of complaint described was to the said James H. Lucas, respondent, offered by the said Darby through means of an agent, in the regular and usual course of such dealing and business. That negotiations thereupon were commenced between the said Lucas and the said agent, (who was one Charles Hodgman,) and were carried on for some weeks, during which time the said Lucas refused certain proposals and conditions of sale made to him by the said agent. And finally the said Lucas placed the value of two hundred thousand dollars upon the said real estate and offered to give therefor the sum of two hundred thousand dollars, and no more. And whereas the said real estate then stood encumbered by the sum of one hundred and fifty thousand dollars, with interest thereon, payable semi-annually, on the 28th days of April and October of each year, it was further proposed on the part of the said Lucas that the said sale should be presently
15 consum'ated, but that the said Darby should, up to the end of the month of April, 1869, receive to his own use all the rents of said buildings and premises, and that he, the said John F. Darby, should pay the interest accruing on said incumbrance up to the 28th April, 1869, and that the said Lucas should assume the payment of the principal of said incumbrance, together with the interest accruing thereon, after the said 28th April, 1869, as part of the purchase-money thereof, and pay to the said John F. Darby the residue of fifty thousand dollars in cash, the said Darby and wife making to the said Lucas a good and sufficient warranty

deed of their interest in said premises. And thereupon it was proposed on the part of the said Darby, that the said Lucas should also pay the taxes on said real estate for the year 1869. But the said Lucas peremptorily refused to agree to pay the said taxes (which he knew to be about twenty-eight hundred dollars) and declined to close the sale unless the said Darby would stipulate to pay said taxes. And thereupon it was expressly agreed that the said Darby would pay the said taxes. And the said James H. Lucas, respondent, thereupon closed and consum'ated the said sale, and received from the said Darby a deed containing covenants for the payment of said taxes, and delivered and paid to the said John F. Darby, the full sum of fifty thousand dollars, relying on the obligation of the said Darby to pay the said taxes, and taking no security whatever therefor except the covenant of the said John F. Darby as aforesaid, and also relying on the promise and undertaking of the said John F. Darby to pay the interest on the said incumbrance maturing and falling due on the 28th April, 1869.

And this respondent says, for further answer to the said bill of complaint, that it is in nowise true that he, the said James H. Lucas, deducted from the cash balance of fifty thousand dollars, the amount of the interest falling due on the said encumbrance on the 28th April, 1869. He says that he paid over to the said John F. Darby, on the 26th April, 1869, the full and complete sum of fifty thousand dollars
16 without any abatement, relying on the said John F. Darby to pay the said interest, the amount of which was six thousand dollars; that he, the said James H. Lucas, entertained no doubt either of the will or the ability of the said John F. Darby to pay the said interest, and trusted fully to his promise in said deed contained so to do; but that he, the said James H. Lucas, did not at any time obtain possession of the notes for the said interest maturing on the 28th April, 1869, nor has he received any formal or authentic voucher therefor at any time. And after the announcement, in the summer of 1869, of the failure of the said John F. Darby, he, the said James H. Lucas, becoming interested in the inquiry for the first time, was informed that said interest had in fact been paid, which information the said James H. Lucas believes to be true. That he, the said James H. Lucas, afterwards, on the 9th December, 1869, was compelled by the insolvency and bankruptcy of the said John F. Darby to pay the taxes assessed on said real estate for the year 1869, being the sum of two thousand eight hundred and fourteen $\frac{37\frac{1}{2}}{100}$ dollars. That he, the said James H. Lucas, respondent, did not have at any time during the negociations for the said sale and acquisition of said real estate, nor until a long time after the same had been consum'ated, any cause whatever to believe the said John F. Darby to be insolvent, or to be acting in contemplation of insolvency, and that he, the said James H. Lucas, had no cause, until long after the consum'ation of said sale, to believe that the said sale and conveyance were made by the said John F. Darby, with a view to defeat the object of, or impair, hinder, impede, or delay the operation or effect of, or to evade the provisions of, the bankrupt law referred to in said bill of complaint.

17 And the said James H. Lucas, further answering, denies that the said real estate so to him conveyed was, at the time of said conveyance, worth more than, or as much as, the sum of three hundred thousand dollars. The said James H. Lucas says, on the contrary thereof, that the said real estate was, at that time, worth the sum of two hundred thousand dollars, ($200,000,) and no more. And the said James H. Lucas denies that he knew or suspected the insolvency or

needs of the said John F. Darby at any time during the negociations for the purchase of said real estate, or until a long time thereafter, and denies that he, the said James H. Lucas, at the time of said negociations and sale, or at any other time, has known or considered that the said real estate was worth to the creditors of the said John F. Darby, or to any other person, more than or as much as three hundred thousand dollars.

And the said James H. Lucas, further answering, says that he, at the time when the said real estate was to him first offered for sale, had not, nor had he at any time during the negociations leading to the sale and conveyance, nor until long thereafter, any belief, suspicion, or apprehension that the said John F. Darby was insolvent, or in contemplation of insolvency; but, on the contrary thereof, the said James H. Lucas then thought and considered that the said John F. Darby, by selling his real estate at a fair and reasonable price, and relieving himself from the burden of the interest on the encumbrances thereon, and placing a large sum of ready money in his banking business, was strengthening and fortifying himself as a banker, and assuring the safety and soundness of his business in that capacity. And it was not until more than a month after he had closed and consum'ated the said sale, and paid the purchase-money therefor, that he learned, to his regret and astonishment, that the said John F. Darby had failed in business, and
18 was insolvent. That said real estate was offered to him, the said James H. Lucas, by the agent of the said John F. Darby, without any solicitation on the part of him, the said James H. Lucas. That, thereupon, he considered the proposals to him made by the said agent, rejecting such of them as he considered unreasonable, and modifying the same according to the views entertained by him, the said James H. Lucas, respecting the value of the said real estate, in the usual and customary mode in which proposals for the sale of real estate are considered. That, during the whole time that such proposals were being considered, and the negotiations for said sale going on, there was no circumstance or thing which gave to him, the said James H. Lucas, any reasonable cause, or any cause whatever, to believer or suspect that the said John F. Darby was in contemplation of insolvency or bankruptcy, or that he was in fact insolvent or bankrupt. That he, the said James H. Lucas, in good faith, considering the property in the bill of complaint described to be worth the price he agreed to pay therefor, but by no means believing then or now that the same was worth three hundred thousand dollars, or anything like it, resolved to make the investment, as a fair, but by no means an unusually good bargain. And that the whole matter was closed, as well as conducted from the first to last, on the part of him, the said James H. Lucas, without any suspicion, belief, or apprehension, or any cause for suspicion, belief, or apprehension that the said John F. Darby was insolvent or in contemplation of insolvency, or that the said sale of the said real estate by the said John F. Darby to the said James H. Lucas was made by the said John F. Darby for the purpose of evading, violating, hindering, impeding, delaying, or defeating any of the objects, operation, or provisions of the said
19 bankrupt law; and that, so far as this respondent is and was concerned, the whole transaction was conducted from first to last with perfect good faith.

And the said defendant, James H. Lucas, denies all and all manner of corrupt contrivance, combination, and confederation against him in said bill of complaint charged, without this, that any matter or thing in said bill of complaint contained, material to be answered unto by him, and

not in this answer well and sufficiently traversed and denied, or confessed and avoided, is true; all which this respondent will maintain and prove as this court may direct; and he humbly prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

THO'S T. GANTT,
Solicitor for Respondent.

And afterwards, to wit, on the tenth day of February, A. D. 1870, the following further proceedings were had in said district court in said cause, to wit:

Replication filed.

ANDREW PARK ET AL., TRUSTEES, &C., COMplainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Thursday, 10th February, A. D. 1870.

This day come the complainants herein, by their solicitors, and file their replication to the answer of the defendant heretofore filed herein.

And the said replication filed on said last-mentioned day is in the words and figures following, to wit:

Replication of complainants.

JOHN K. TIFFANY AND ANDREW PARK, TRUStee' of the estate of John F. Darby, bankrupt, pl'ffs,
vs.
JAMES H. LUCAS, DEF'T.

20 In the district court of the United States for the eastern district of Mo. In bankruptcy.

The replication of John K. Tiffany and Andrew Park, trustees of the estate of John F. Darby, bankrupt, complainants, to the answer of James H. Lucas, defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

SAMUEL KNOX,
Of Counsel for Complainants.

And afterwards, to wit, at a regular stated term of said district court, begun and holden at the city of St. Louis, in said district, on the third

Monday, the 21st day of November, A. D. 1870, the following further proceedings were had in said cause, on Friday, the 27th day of January, A. D. 1871, to wit:

Cause heard in part.

ANDREW PARK ET AL., TRUSTEES, &C., COMplainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Friday, 27th January, A. D. 1871.

This day come the parties herein, by their respective solicitors, and this cause being brought on for hearing, the same was in part
21 heard.

Hearing continued.

And the hearing thereof not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had in said cause, on Saturday, the twenty-eighth day of January, A. D. 1871, to wit:

Cause further heard.

ANDREW PARK ET AL., TRUSTEES, &C., COMplainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Saturday, 28th January, A. D. 1871.

This day come again the parties herein, by their respective solicitors, and the hearing of this case was resumed, and said cause was further heard, and the hearing thereof not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until Tuesday morning next, the thirty-first day of this present month of January.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had in said cause, on Tuesday, the thirty-first day of January, A. D. 1871, to wit:

Cause further heard.

ANDREW PARK ET AL., TRUSTEES, &C., COMplainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Tuesday, 31st January, A. D. 1871.

This day come again the parties herein, by their respective solicitors, and the hearing of this cause was resumed, and said cause was
22 further heard.

Hearing continued.

And the hearing thereof not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had in said cause, on Wednesday, the first day of February, A. D. 1871, to wit:

Cause further heard.

ANDREW PARK ET AL., TRUSTEES, &C., COMplainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Wednesday, 1st February, A. D. 1871.

This day come again the parties, by their respective solicitors, and the hearing of this cause was resumed, and said cause was further heard.

Hearing concluded and cause taken under advisement.

And the hearing thereof being concluded, said cause was thereupon submitted to the court upon the pleadings and proofs and arguments of counsel, and, not being fully advised of and concerning the premises, the court took the said cause under advisement.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had in said cause, on Friday, the third day of February, A. D. 1871, to wit:

Death of Andrew Park, one of complainants, suggested.

ANDREW PARK ET AL., TRUSTEES, &C., COMplainants,
against
JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Friday, 3d February, A. D. 1871.

This day comes William F. Causey, one of the solicitors for the
23 complainants herein, and suggests to the court that Andrew Park, one of said complainants, hath departed this life.

Order that suit proceed in name of remaining complainant.

Thereupon, on motion of said solicitor, it is ordered by the court that this suit proceed in the name of the remaining complainant, John K. Tiffany, as surviving trustee in bankruptcy of John F. Darby, bankrupt.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had in said cause on Tuesday, the fourteenth day of February, A. D. 1871, to wit:

Decree dismissing the bill.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., complainant, *against* JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Tuesday, 14th February, A. D. 1871.

This day come again the parties herein, by their respective solicitors, and this cause having been brought on for hearing at this term and having been fully heard and argued, and the court upon consideration thereof being now fully advised of and concerning the premises, it is ordered, adjudged, and decreed that the bill of complaint herein be, and the same is hereby, dismissed, at the complainant's costs.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had in said cause on Thursday, the sixteenth day of February, A. D. 1871, to wit:

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., complainant, *against* JAMES H. LUCAS, DEFENDANT. } In chancery.

24 *Motion for rehearing filed.*

AT ST. LOUIS, IN SAID DISTRICT,
Thursday, 16th February, A. D. 1871.

This day comes the complainant, by his solicitors, and files his motion to set aside the decree rendered herein and to grant a rehearing of this cause.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had in said cause on Saturday, the eighteenth day of February, A. D. 1871, to wit:

Motion for rehearing withdrawn.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., complainant, *against* JAMES H. LUCAS, DEFENDANT. } In chancery.

AT ST. LOUIS, IN SAID DISTRICT,
Saturday, 18th February, A. D. 1871.

This day come the parties herein, by their respective solicitors, and said complainant, with the leave of court, withdraws the motion heretofore filed by him to set aside the decree rendered herein and to grant a rehearing of this cause.

Appeal allowed.

And on motion of said complainant, an appeal is granted to him to the circuit court of the United States for the districts of Missouri, from the said decree heretofore rendered in this cause.

Bond approved.

And said complainant thereupon presents to the court his bond of appeal in the sum of one thousand dollars, signed by said complainant as principal, and Samuel Knox as surety, which bond is approved by the court, and ordered to be made part of the record herein.

Transcript of record and proceedings ordered.

And thereupon it is ordered by the court that a transcript of the record and proceedings in this cause, as specified in a memorandum this day filed by the parties herein, be certified to said circuit court.

25 And the said memorandum filed by said parties on the said eighteenth day of February, A. D. 1871, is in the words and figures following, to wit:

Memorandum of proceedings to be ordered in transcript.

JOHN K. TIFFANY, SURVIVING TRUSTEE OF John Darby, in bankruptcy,
vs.
JAMES H. LUCAS.

It is ordered by the court that a transcript of the bill, answer, and replication, and evidence of the parties in the above-entitled cause be transmitted to the circuit court of the United States for the districts of Missouri, that is to say, copies of the bill, answer, replication, and the following evidence:

First. On the part of the complainant, was given:

1. The deposition of C. M. Newcomb.
2. The deposition of A. R. Newcomb.
3. The deposition of W. W. Ivory.
4. The deposition of John S. Wilson.
5. The deposition of Alexander Whilldin.
6. The deposition of Geo. Nugent.
7. The deposition of M. B. O'Reiley.
8. The deposition of Geo. C. Kerr.
9. The deposition of F. Vallé.
10. The deposition of John F. Darby.
11. The deposition of H. W. Leffingwell.
12. The deposition of M. A. Wolfe.
13. The deposition of Ed. Wyman.
14. The deposition of Green Erskine.
15. The deposition of T. Polk.
16. The deposition of J. A. Sumner.

26 17. The deposition of J. H. Britton.

18. A deed of John F. Darby and wife to F. Vallé and A. R. Newcomb, dated October 28th, 1868.

19. A deed of mortgage of John F. Darby and wife to Moss Prewett, dated September 19th, 1868.

20. A deed of release from Moss Prewett to John F. Darby, dated Sept. 19th, 1868.

21. A deed of Darby and wife to Moss Prewett, dated June 20th, 1866.

22. A deed of trust, Darby and wife to Campbell and Dickson, use of E. S. Willing, dated June 15, 1859.

23. Another deed, same parties, and on same date.

24. Another deed, same parties, same date.

25. A deed of Darby and wife to Cha's K Dickson to secure estate of A. H. Henderson, dec'd, dated June 19th, 1866.

26. A deed of trust, John F. Darby and wife to C. K. Dickson for use of W. H. Darby, dated May 5, 1866.

27. A deed of Darby and wife to Cha's K. Dickson, for use of James H. Britton, dated Jan'y 2, 1868.

28. A deed of John F. Darby and wife to Cha's K. Dickson, for use of J. H. Britton, dated Feb'ry 25, 1868.

The entries of release or satisfaction on any of the foregoing deeds will be inserted in the record as endorsements upon the several deeds, each as it is found on the deed as fully as the entry or satisfaction appears on the deed.

29. A deed of John F. Darby and wife to F. Vallé for use of W'm F. Ferguson, dated 21st Jan'y, 1868, and the entry of release endorsed thereon, dated May 18, 1868.

30. A deed from John F. Darby and wife to James H. Lucas,
27 dated April 24th, 1869.

31. A deed from Darby and wife to Moss Prewett, dated Sept. 19th, 1868, being the same on file in this court in case No. 760.

32. A deed of John F. Darby and wife to F. Vallé, for use of Coswell F. Darby, dated Dec'b'r 17, 1868, on file in case No. 760 of this court.

33. A deed of John F. Darby and wife to Francis Vallé for use of W'm F. Ferguson, dated June 23, 1868; same on file in case No. 760 of this court.

34. A deed of trust from John F. Darby and wife to W'm Wightman's trustee, dated Jan'y 24, 1868.

35. A deed of trust from Darby and wife to Thomas H. Powers, trustee, dated Jan'y 3d, 1868.

36. A deed of trust, Darby and wife to Alexander Duncan's trustees, dated first day of July, 1859, recorded in book 220, page 227.

37. Another deed of trust, Darby and wife, to Alexander Duncan's trustee, dated first day of July, 1859, recorded in book 222, page 433.

38. And that said John F. Darby was duly adjudicated a bankrupt on July 12th, 1869, which was admitted by the parties without inserting the proceedings in the record.

And on the part of the defendant was given in evidence the following evidence, to wit:

1. The deposition of J. H. Lucas, the defendant.

(In copying said last-mentioned deposition the clerk will omit the parts thereof marked "ruled out."—S. T.)

At the time when the defendant offered to read in evidence the deposition of said Lucas, and before the reading thereof, the plaintiff objected to the following portion thereof, and asked the court to exclude the same for the reason it was irrelevant and incompetent, viz: "But
28 that is not strange; I have seen that done often with other paper

of that class selling a small discount, sometimes more and sometimes less; that's been done for years back. I have seen old Mr. Bechtold's paper selling at 12 per cent. They said at the Boatmen's they would not take it. I said it was as good as any that they had got lying on your table; but they said it would not be paid at maturity, and they would have to extend it, and that is the kind of paper that has to be sold on the street."

But the court refused to exclude said part of said deposition, and the same was read as evidence for def'd't, and the objection of the complainant thereto was overruled by the court.

And at the same time the complainant objected to the following portions of the same deposition, and asked the court to exclude the same as incompetent and irrelevant, viz: "Did you ever know of paper endorsed by Col. O'Fallon, and by old Col. William Chambers, sold on the streets somewhat in that neighborhood? Ans. There have been times here, sir, when any paper for a considerable sum on the street would sell as low as that; almost any paper for any considerable amount, even with such names as Col. O'Fallon and Chambers."

But the court overruled the objection and allowed the same to be read in evidence.

At the same time the complainant objected to the following question put to the said James H. Lucas, as shown in said deposition, viz: "Did you ever hear of a higher estimate than 200,000 dollars being placed on that property, and if so, what was the price of gold at the time that estimate was put on it," as incompetent and irrelevant, but the court overruled said objection and refused to exclude said question; and the complainant objected to the entire answer of the witnes Lucas to said
29 question as incompetent and irrelevant, and asked the court to exclude said answer; but the court refused to exclude the same, and it was read in evidence.

2. The deposition of John G. Priest.

(In copying this deposition the clerk will omit the parts marked "ruled out."—S. T.)

3. The copy of the deed of the Centenary Church to John J. Roe, dated October 20th, 1868, conveying lot in block 115, fronting 64½ feet on Fifth street by 127½ feet on Pine street, for $142,000.

4. The Merchants & Banker's Almanac, showing the price of gold at different periods, was considered as in evidence, and it was admitted that by it it appeared that one hundred dollars in gold was, in July and the subsequent months of 1864, worth upwards of $200 in currency or greenbacks; that in 1865, $100 in gold was worth from one hundred and sixty to one hundred & seventy dollars in greenbacks; that about the same prices ruled in 1866, (gold all the time declining, however.)

When the foregoing evidence had been read by the respective parties, each party announced, by his counsel, to the court that the testimony was closed, and the defendants counsel, Col. T. T. Gantt, proceeded to address the court for some time on the side of the defendant.

After which the court adjourned to another day.

On the next morning when the court met Col. Gantt, counsel for defendant, asked to introduce further testimony, to wit, a deposition of Sullivan Blood, which had been taken in the cause by the complainant, stating to the court that he had intended to read said deposition the day previous, but had forgotten it.

The complainant objected to the reading of said deposition as out of time and irregular, and that no ground was shown for reading said dep-

osition; but the court sustained the application of defendant's
30 counsel to read said deposition, and the same was read as evidence for the defendant. The clerk will insert the same in the said transcript.

After the said deposition of Sullivan Blood was read as above, the plaintiff produced and offered to read in evidence a paper in the words and figures following, to wit:

(The clerk will here insert the same in the transcript aforesaid.)

Deposition of Sullivan Blood.

United States district court, eastern district of Missouri.

IN THE MATTER OF JOHN F. DARBY, BANKRUPT. } In bankruptcy.

At the office of Sam'l Knox, esq., southwest corner of Olive and Fifth streets, in the city of St. Louis, December 15th, A. D. 1869.

I, Sullivan Blood, having been first duly sworn by H. M. Jones, esq., United States commissioner, depose and say in answer to questions by Sam'l Knox, esq., as follows, to wit:

I reside in St. Louis; am president of the Boatmen's Savings Institution; have been president of that institution for thirteen years. The directors of the institution in 1868, and up to the present time have been, and are, James H. Lucas, R. J. Lackland, James Smith, Carlos S. Greeley, Adolphus Meier, George S. Drake, Louis A. La Beaume, Luther M. Kennett, John G. Copelin, and William A. Hagardine and myself, and George K. Budd. During the last year the directors have met every day. Mr. La Baume and Kennett were in Europe, and did not attend the meetings of the board; the daily attendants were Messrs. Greely, Lackland, George S. Drake, and myself. Mr. Lucas did not very often meet with us; he used to drop in, but he never staid to the meeting of the board; he sometimes would sit there, but he never took any
31 active part with the business of the board; he comes in sometimes every day before the board meets, and very frequently goes away before the board does any business, and sometimes sits there while they do the business, but he rarely ever takes any active part in the business. Mr. Lucas has but 5 shares; sold 80 shares several years since. Mr. Smith, Mr. Greeley, and Mr. Drake own one hundred shares, some two hundred. I can't say that Mr. Lucas is one of our largest depositors; he is a pretty good depositor; sometimes he has a pretty large amount there, and then again he does'nt have any; he keeps all his deposits there. Mr. Hargadine attended the meetings of the board more in 1869 than in 1868. Mr. Smith is a constant attendant, and Mr. Greely; they seldom fail. At the meetings of the board paper offered for discount always comes before the directors. I have known John F. Darby since 1820, I think; I think this is the second time he has failed in business since my acquaintance with him; if he failed in '41 or '42 I don't recollect it; I was on the river then and hardly knew what was going on here. The Darby & Barksdale failure in '57 was regarded, I think, as for a large amount, but I understood Mr. Darby to say that he had paid all that up. Since his failure in 1857 Mr. Darby has been doing business as a private banker. I don't know that he was doing any other business. He had some concern in mines, but I don't know to what extent; I don't think he has been doing a very large business as a banker for one or two years; I think he did a large business at one time; to some considerable extent; he appeared to be doing a good deal; I think for the last two or three

years Mr. Darby has been pretty hard up for money; I judge from seeing his paper around the streets for sale by brokers; I think it is 4 or 5 years since his paper came to be pretty plenty in amounts from $5,000 to $10,000; I very seldom saw a note for over $5,000 for sale.

32 Q. What would you say in relation to the pecuniary condition of a man carrying on a banking business whose paper was on the street in the hands of note-brokers for sale for years?

A. Well, we always begin to think then that it is not as safe a place as a good many others.

Q. Do you think a solvent banker is on the street shaving his paper for 4 or 5 years?

A. No; I wouldn't think so.

Q. As soon as you discovered that Mr. Darby was in the hands of note-brokers, did you not then think he was in a pretty shaky condition?

A. I did.

Q. And didn't your institution for years refuse to discount his paper?

A. I couldn't say for years. I think it is about a year since we generally declined taking any of it; but there were first-rate endorsers on some of it. If we saw men we were pretty familiar with on it, we would take it.

Q. Hain't you refused, on his personal application, for more than a year, to discount his paper in the way of regular discount?

A. Well, I think we have generally declined.

Q. And hasn't the paper you have held for the last year been paper that the Boatmens' bought from note-brokers who had it for sale?

A. Yes, most altogether, excepting one transaction, which was a large transaction.

Q. At what rates of discount did Mr. Darby's paper use to be sold by these brokers?

A. Well, discounted from 10 % to 12 % generally.

Q. Didn't they discount it for from 1¼ % to 1½ % per month?

A. Oh, yes; sometimes.

Q. And didn't they at your institution?

A. I think we did some.

33 Q. You usually bought of Mr. Stagg, did you not?

A. Yes, sir.

Q. How long a time is it that you have refused to take Mr. Darby's paper, except by way of purchasing it of note-brokers?

A. Well, I think sometimes he would come in himself, and make application with a good endorser, and we would take it; but not within a year or more; may be two years.

Q. Isn't the reason why you did not take his paper direct because the risk was too great to warrant you to take it direct, and you wanted a greater rate of discount than you would have made with him direct?

A. Yes, sir.

Q. Do you believe that Mr. Darby has been a solvent man since he failed in the firm of Darby & Barksdale?

A. Well, I couldn't say what I believed now about it. I have thought, until within a very short time, that Mr. Darby had a great deal of property. I knew he was hard up, but I didn't know how his property stood. I concluded that he had considerable property until 2 or 3 years ago, when I saw so much of his paper on the street that I began to think he was not so well off as a great many people thought he was.

Q. Didn't you, two or three years ago, come to the conclusion that he must go under?

A. No; I don't think it was talked over in our institution that long ago.

Q. Well, how long ago was it talked over?

A. A year or a year and a half ago it was thought he must go under from what we saw.

Q. How common in your institution was that talk?

A. It was thought by our directors that he could'nt stand it in the way he was going on. I believe that was general among the directors.

Q. Was that often discussed?

A. It was spoken of frequently. If we took any paper from
34 him, we wanted a very good endorser always.

Q. And you have looked, for the last two or three years, more to the endorsers than to the principal?

A. Yes.

Q. When did you first become acquainted with the fact that his city property here was all greatly encumbered?

A. I don't know as we knew anything in particular about his property until his failure, or about the time he sold this house on Olive and Fifth streets to Mr. Lucas. May be it was then. I think the buying was talked about, and we found his property was encumbered a good deal.

Q. Didn't you know of his making a loan, a year ago this last fall, of $150,000 on this property?

A. No; I didn't know that until he was offering it for sale to Mr. Lucas.

Q. How long ago was that?

A. Not a great while before Mr. Lucas bought it. We were a good deal surprised that there was so much encumbrance on this property when he wanted to sell.

Q. How long before the sale to Mr. Lucas were you aware, personally, of the amount of encumbrances on this property?

A. Well, I think it wasn't until Mr. Lucas talked about buying it, and then it was stated what was on it.

Q. Who stated that?

A. I don't know whether it was Mr. Lucas or Mr. Hodgman. I was a good deal surprised, and a good many of the directors were, when we found it was encumbered as much as it was.

Q. What would have been your opinion of Mr. Darby's solvency if you had known it in October, 1868, that this property was encumbered for $150,000, and his Main street property was encumbered for $90,000?

35 A. Well, I should have thought that he was pretty near insolvent.

Q. Wouldn't you have thought that he was utterly in a state to be put into bankruptcy, that he was likely to go into bankruptcy at any time?

A. That would depend a good deal upon how much he owed other ways.

Q. Then, from your knowledge of what he owed other ways (from seeing his paper in the hands of brokers) added to these incumbrances, would you have had the slightest doubt of his being irredeemably insolvent?

A. We didn't know how much he owed; we supposed a good deal of his paper was on the street, we didn't know how much, but it used to come to us frequently; we found there was plenty, and we concluded we wouldn't discount any more a year, or may be more, ago.

Q. If you had known of these incumbrances with what you know of this paper in the street, what would have been your opinion of his insolvency?

A. My opinion would have been that he was insolvent.

Q. And would you have had any idea, if you had known these facts, that he could ever have relieved himself?

A. Well that would naturally have been my opinion, that for a man of his age it would be very difficult for him to recuperate again.

Q. Did Mr. Darby negotiate a loan with your institution in the autumn of 1868; and if so at what time, under what circumstances, and for what amount?

A. I can't tell you as to time.

Q. About what time?

A. Well I think it wasn't as early as that. I think his note matured the first of June, and the note was for 6 months. I think that would make it November or December, I think it was; I won't pretend to state these facts. Mr. Hodgman could tell you. He came to our insti-
36 tution and wanted to get as much money as he could on one hundred and fifty county bonds—jail bonds. He had 150 that he wanted to leave as collateral security, and wanted to get as much money on them as we were willing to let him have. He hadn't the bonds; they were in the National State Bank. We discounted his note for $135,000, I think.

Q. At what rate of discount?

A. I think at 10 %. The proceeds of that note were paid over to the State National Bank, as I remember it now; the bonds were in New York, and they gave us an order for them. We deposited the bonds in our bank in New York, The Bank of America. We gave him the privilege of selling those bonds himself in small numbers any time when he could make a sale in New York or here. We agreed to give him an order for any that he would pay us the amount for—5, 15, or 20—and he continued to make sales every 2 or 3 days or weeks. He would pay us for these bonds, and we would give him an order for them on The Bank of America. I think he paid something on that note before it matured; but when it did mature it wasn't paid by considerable; I don't recollect the amount, and he continued on until he sold these bonds and paid the note.

Q. Did you take any other security than these bonds for the loan he made at that time?

A. We took his own note, that was all. I understood that when Mr. Darby bid these bonds off, he was the highest bidder for them; I thought it a remarkable transaction for a man in his circumstances to make that purchase. We talked of it at the time the purchase was made. I don't recollect how long it was after the purchase that he came to us to
37 get money to pay the Bank of the State of Missouri. I think I understood that he borrowed the money of the State Bank to buy them with. I had no personal knowledge of it. I think Mr. Darby left the application for this money ($135,000) with the cashier, and the cashier presented it to the board. I don't recollect who was present when it was passed on. Mr. Hodgman was the cashier, and the proposition was left with him. It was left there in writing, and after one or two meetings we concluded to loan him $135,000 on the 150 bonds. I don't think Mr. Darby made any money on those bonds. I think he must have lost something. I didn't think it was a judicious purchase. We didn't think he could make a great deal of money out of them. We wouldn't have taken them at the price he did. I don't recollect what he gave for them

now, but we thought there was not much money in them. I think we frequently spoke of the matter about the time the bonds were purchased.

Q. Didn't you, at the time or about the time that Mr. Darby purchased these bonds, look upon it as the act of a man who was in desperate circumstances, and was trying like a drowning man to hold on to something to buoy him up?

A. I don't know what others thought, I thought so myself, that Mr. Darby was purchasing the bonds in that way. He thought he would make money on them, I suppose, but I didn't see how he could. I thought it was a curious purchase for him to make, and I think he must have lost money on them.

Q. Were you not surprised that he did not go into bankruptcy and close his bank for months before he did.

A. Well, I don't know. I think there was a rumour a short time before he did close of something of that kind. You know there was a rumour two or three years ago that Mr. Darby had failed when
38 Runyan failed. The news got on the street, but it was a mistake, and Mr. Darby followed it up and found out where it came from. It turned out that old Mr. Reyburn had made a mistake. He had heard of Mr. Runyan's failure and made a mistake in the name and told that Mr. Darby had failed; he had to acknowledge that when he was saying Darby he meant Runyan. After that report I don't know that Mr. Darby was looked upon as going to fail. At the time I heard that report I don't think any of us thought that Mr. Darby was going to fail. I didn't for myself; that has been, you know, three years ago or more. I think people were surprised to hear the report at that time. I don't think it got to be very current. That was before his paper got on the street. Mr. Darby has been a borrower at our place for years and years. He used to come in with his paper himself; that was before he went on the street. We used to loan him frequently at our regular rates of discount, and finally we declined, and he got a little crabbed about it; he thought because he used to be a director in the old institution that he had a right to come in there. I don't think it created any surprise with our board when he finally went under; it didn't with me, any way. I thought he would have to close; he didn't appear to be doing much of anything for a year before he stopped. I don't think I ever observed his income returns. I generally observe income returns to see how men stand, but I don't know that I ever noticed his.

Q. Hain't you refused for years to buy exchange on the east that Mr. Darby has offered at your institution?

A. Yes. I don't suppose we have bought his exchange for two years.

Q. And that was because you thought it was hazardous?

A. Yes.

39 Q. And you would not have bought it any rate, would you?

A. I don't think we would.

Q. When you closed up this loan matter with Mr. Darby were there any bonds left to be turned over to Mr. Darby?

A. I could't tell you that; it run along a good while after his note matured, and he still continued to sell bonds, and we gave him orders for them until he wiped the whole thing out.

S. BLOOD.

Subscribed and sworn to before me this 19th day of January, A. D. 18.0.

H. M. JONES,
U. S. Commissioner Mo. Dist's.

The defendant admitted that the signature to said paper was the proper genuine signature of said Sullivan Blood, and the complainant offered the same as competent to impeach the testimony of said Blood as contained in his deposition read by defendant, but the court refused to hear said papers, marked , read, and, on motion of the def'd't, excluded the same. And this was all the evidence read or offered to be read in the cause, and the clerk will insert the above and foregoing in the said transcript.

And the said bond of appeal in said cause is in the words and figures following, to wit:

Bond of appeal.

Know all men by these presents that we, John K. Tiffany, as principal, and Samuel Knox, as surety, are held and firmly bound unto James H. Lucas, in the full and just sum of one thousand dollars, to be paid to the said James H. Lucas, his heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this eighteenth day
40 of February, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at the November term, 1870, of the district court of the United States for the eastern district of Missouri, in a suit depending in said court, between Andrew Park and John K. Tiffany, trustees in bankruptcy of John F. Darby, a bankrupt, complainants, and James H. Lucas, defendant, a decree was rendered dismissing the bill of said complainants in said suit, and the said John K. Tiffany, as surviving trustee in bankruptcy of the said John F. Darby, having been allowed an appeal from the said decree to the circuit court of the United States for the districts of Missouri:

Now, the condition of the above obligation is such, that if the said John K. Tiffany, surviving trustee aforesaid, shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good such appeal, then the above obligation to be void; else to remain in full force and virtue.

JOHN K. TIFFANY. [SEAL.]
SAMUEL KNOX. [SEAL.]

Signed and delivered in presence of—
WILL'M R. WALKER.

Approved by—

SAMUEL TREAT, *Judge.*

EVIDENCE FOR COMPLAINANTS.

Deposition of C. M. Newcomb.

Deposition of C. M. Newcomb, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

C. M. NEWCOMB, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. What is your occupation?

41 A. I am general agent of the American Life Insurance Co.

Q. Where is the headquarters of the co.?

A. In Philadelphia.

Q. How long have you been engaged in St. Louis as the agent of that co.?

A. Since November, 1866.

Q. Do you know John F. Darby?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for about three years.

Q. Do you know anything of his having made a loan of the American Life Insurance Co., of Philadelphia; and if so, what time, and for what amount?

A. Yes, sir; a loan for $150,000 was made in the fall of 1868; I do not recollect *just nor* just the month nor the time.

Q. Was it secured or not?

A. It was.

Q. On what property?

A. On the building on the southwest corner of 5th and Olive streets.

Q. Known as what building?

A. As the Darby building.

Q. Did you have any certificates of value, as to the value of that property, before the loan was made?

A. Mr. Darby handed us a certificate of value, signed by three citizens of this city.

Q. Who were they?

A. One was James H. Britt*ain*, president of the National Bank of the State of Missouri; another was James H. Lucas, and the name of the third I do not recollect, but I think it was either an architect

42 or a real-estate man in the city; his name I have forgotten.

Q. What was done with that certificate?

A. It was forwarded to the company.

Q. Have you made any effort to get that certificate, and on whose application?

A. Yes, sir; we wrote the company for it, I believe on your (Mr. Knox's) application.

Q. How long since?

A. I think it is some four or five months since.

Q. Were you not able to obtain it; and if so, why not?

(Objected to by Mr. Gantt.)

Q. I will ask you what success did you meet with, and what reply to your application for the certificate?

(Mr. Gantt objected to the reply, unless it is produced.)

A. The letter is on file in our office.

Q. What was the valuation fixed on the property of Darby's building, on which the American Life Insurance Co. made the loan under the certificate signed by Lucas and Britt*ain*?

(Mr. Gantt objected to the question, as the witness does not remember the tenor of the certificate.)

Q. Do you recollect the purport of the certificate that was handed to you, signed by James H. Britt*ain* and James H. Lucas?

A. Yes, sir.

Q. Now, sir, will you state it as well as you can recollect?

(Mr. Gantt objected, as it does not appear that the witness knows any more of the certificate than that it purported to be signed by them.)

Q. State, if you please, the purport of that certificate.

A. The purport of the certificate was that the cash value of
43 that property was at least $300,000; that was the substance of it.

Q. What effect did that certificate have toward procuring the loan in Philadelphia?

(Mr. Gantt objected to the question as incompetent.)

A. I scarcely know how to answer that question.

Q. Well, I do not care about it.

A. It was a question decided by the home office; I do not know how to answer it.

Q. Did you receive any communication, about the time the loan was made, from Mr. Darby touching this property, and containing a certificate of its value?

A. When Mr. Darby sent us that certificate he sent us a note with it.

Q. Where is that note?

A. I do not know, sir. I think it has been destroyed; it was of no permanent value to us after the loan was made.

Q. Have you made a search for it?

A. I have not, sir.

Q. I will ask you if you recognize that (handing witness a paper) as being the substance of the communication or not of Darby's letter to you?

(Objected to as leading.)

Q. Well, I will put it in another shape: Will you state, Mr. Newcomb, whether you can give the substance of the communication of Mr. Darby to you touching this loan?

A. (After having laid aside the paper as desired by Mr. Gantt.) Well, I think we had two or three notes from Mr. Darby. I know he made (at the commencement, after we had some conversation in reference to this matter) a formal application, which, with the certifi-
44 cate of value, was forwarded to the company. During the negotiations, I think, we received at different times two or three notes in reference to business matters from Mr. Darby.

Cross-examination waived.

C. M. NEWCOMB.

Deposition of A. R. Newcomb.

Deposition of A. R. Newcomb, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

A. R. NEWCOMB, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. What is your business, Mr. Newcomb?

A. Insurance agent.

Q. For what company?

A. The American Life Insurance Company of Philadelphia.

Q. Where is your office?

A. The southeast corner of Fourth and Chestnut.

Q. How long have you been in the business here?

A. Since November, 1866.
Q. Do you know John F. Darby?
A. I do.
Q. How long have you known him?
A. Well, I have known him probably for three years by sight.
Q. Do you know anything of his having made a loan of the American Life Insurance Company of Philadelphia?
A. Yes, sir.
Q. What time?
A. I do not know that I can give the exact date of it; it is two years since, I think. If I had looked I could tell. I cannot say.

45 Q. What was the amount of that loan?
A. $150,000.

Q. Was it secured; and if so, on what property?
A. Yes, sir; it was secured on the property on the corner of 5th and Olive streets.
Q. How long a time had it to run?
A. Five years.
Q. Did you see any certificate as to the value of the property before the loan was made?
A. Yes, sir.
Q. Whose names were attached to that certificate?
A. Well, I can give you positively the names of two parties—James H. Lucas, and James H. Brittain, president of the National Bank of the State of Missouri.
Q. What became of that certificate?
A. It was sent to the company.
Q. What efforts have been made, if any, to get the certificate from the company?
A. I wrote the company, and they said they didn't know whether it was destroyed or mislaid.
(Objected to.)
Q. Where have you ever seen it since you sent it to the company?
A. Since I sent it to the company I have never seen it.
Q. Do you know what valuation was fixed on the property on which the loan was made, signed by Mr. Brittain and Mr. Lucas?
A. $300,000.
Q. Do you recollect having any correspondence with Mr. Darby touching the loan?

A. No; I do not know that we had any correspondence, or
46 any occasion to write any letters to Mr. Darby. We received some from him in the form of a proposition for an application for a loan.

Q. Did you see those letters yourself?
A. Did I see them? Oh, yes.
Q. Where are they?
A. I think they are destroyed. When the loan was granted, any papers that were of no use to us we tore them up.
Q. What efforts have you made to find them?
A. Well, my brother looked for them this morning, and could not find them. He had charge of them himself. My brother, particularly, had charge of negotiating the loan through Mr. Ivory. Mr. Ivory came to us in the first place. Mr. Ivory was the man negotiating the loan for Mr. Darby; he came to us. We wrote to the company for Mr. Darby.
Q. Would you recognize a copy of the letter if you saw it—the substance of it?

A. Yes, sir; I think I should.

Q. Will you take that, (handing witness a paper,) and state what that is, to your best recollection?

A. (After perusing the paper.) I should say that was a copy of the letter, as near as I can remember.

(Mr. Gantt objected.)

(Paper attached to the deposition of Mr. Darby, and marked Exhibit "A.")

Cross-examined by Mr. Gantt:

Q. What means have you of knowing that to be a copy, Mr. Newcomb?

A. I did not say I knew. I say I think it is. The substance of it is the same; the terms are the same.

47 Q. You read the supposed original some two years ago?

A. Yes, sir.

Q. And then destroyed it as soon as the loan was made?

A. No, sir; I do not know that we destroyed it as soon as the loan was made; the paper, I think, was destroyed—the original.

Q. When did you last read the original of the copy?

A. I could not give the exact date.

Q. About?

A. A year, perhaps more; I could not give the exact date.

Q. Have you any recollection of having read the original letter within a year?

A. No, sir; I could not state positively that I read it within a year.

Q. Could you state you read it within 18 months?

A. I cannot give any definite time in regard to when I read it; only I read it when it was received.

Q. How often did you read it?

A. Not very often; I had no occasion to read it after the loan was granted.

Q. And it is from these data that you infer that to be a copy?

A. Yes, sir; merely from my recollection of what was in the letter at the time, I would say it was a copy; I would not swear it was a copy.

Q. Do you know anything about the value of property in St. Louis?

A. My idea of property in St. Louis would be second-hand—from the opinions of others; I have not been interested enough in real estate to say I would give the value of property exactly.

48 Q. Are you able to state the terms of that certificate that you speak of—the language of it; whether it was that the property was good security for the proposed loan, or that it was worth so much?

A. Yes, sir; I believe I could give you the exact terms of it, or nearly the exact terms of it; the certificate was to this effect, that the property on the corner of 5th and Olive, belonging to John F. Darby, was worth at least $300,000; these were the words; because I know that to be, for the reason that the company would never loan only half its valuation.

Q. What time was this?

A. Without referring to the date, I could not tell; if I had the original at our office, I could give you the exact date of the loan.

Q. Well, can you tell by any memorandum that you have now, or that you believe to be correct copies?

A. If you wish me to go and get it, I can give you the exact date.

Q. Oh, no. In what year was it?

A. 1868.

Q. In what season—spring, summer, autumn, or winter?
A. It was in the fall.
Q. And what time in the fall?
A. I could not give the exact date; I can give you the exact date by——
Q. Can you give us the month?
A. I do not know that I can; it is a matter of a long time; if you will give me a few minutes time, I will give you the exact date.
Q. I can see that by the deeds; do you know what was the price?
A. The loan was made in October, I think.

49 Q. Do you know what was the price of gold in September, 1868?
A. I do not remember it.
Q. Do you know whether it was higher or lower than it is now?
A. Higher, sir.
Q. How much?
A. I could not tell you; but I know gold was not as low as this in several years.
Q. You say you cannot answer that question?
A. I could not give you just the rate of gold in October, 1868.
Q. Or September?
A. Or September, 1868.
Q. Was not it as much as 145?
A. Possibly; I am satisfied it was not as low as it is at present.
Q. But you cannot say whether it was as high as 145; what is your best belief on that subject?
A. I could not say that it was; I have no particular means of knowing; I had nothing to do particularly in gold.
Q. Was not it as much as 150?
A. I could not say, sir; I have answered once; I think that is enough.
Q. But you have not answered it?
A. I said I could not tell exactly.
Q. You said you could not tell whether it was as much as 145?
A. I could not state positively the rate of gold at that time.
Signature waived.

Deposition of W. W. Ivory.

Deposition of W. W. Ivory, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

50 W. W. IVORY, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. Mr. Ivory, what is your occupation?
A. Real-estate and loan agent, negotiating real-estate loans.
Q. Where?
A. 305½ Olive street, in this city.
Q. How long have you been engaged in that business?
A. Since the fall of 1866.
Q. Had you any agency in procuring a loan of the American Life Insurance Co. of Philadelphia, for Mr. Darby, in 1668?
A. Yes, sir.

Q. What agency had you in procuring it?

A. Mr. Darby sent me a note some time in the summer of 1868——

(Mr. Gantt objected to this as incompetent.)

Q. What did you do then?

A. I saw Mr. Darby in reference to it; he sent me word to come and see him in reference to loans; I had advertised money to loan; negotiating loans to a large amount, and he saw me in reference to this loan; said he wanted to make a loan of $150,000; he wanted a larger amount, but it was fixed at $150,000; he agreed to take that, and I told him I thought I could negotiate the loan; then I got in communication with the Newcombs; agents of the American Life. After several interviews with Mr. Darby, and then with the Newcombs; I got Mr. Darby to make a formal application, put in writing, and to get certificates as to value, and he got his certificate signed by Colonel Brittain and Mr. Lucas, and I believe or two other names, that I forget.

Q. What Lucas signed it?

51 A. James H. Lucas; estimating the value of the property at $300,000.

Q. What was done with the certificate?

A. That was given over to the Messrs. Newcomb.

Q. Who were they?

A. The agents of the American Life, Philadelphia.

Q. How familiar were you with Mr. Lucas' signature?

A. Well, I have seen his signature.

Q. How frequently?

A. Well, perhaps half a dozen times.

Q. What property was this that was valued at $300,000?

A. The building, at the southwest corner of 5th and Olive street, known as the Darby building—the Darby block.

Q. Do you know what was the result of the negotiations for this loan, the $150,000?

A. Yes, sir; after a good deal of correspondence and writing, Mr. Weldon, the president of the American Life Insurance Company came out here himself, had a joint consultation with Newcomb and myself; we paid his expenses so that he would satisfy himself that the loan was a good one, that there was a double margin on it. He came out and concluded the negotiatio', $150,000 at 8 per cent.

Cross-examined by Mr. Gantt:

Q. You are a real-estate agent, Mr. Ivory.

A. Yes, sir.

Q. When was this?

A. That was in the summer of 1868; I think it must have been.

Q. Summer of 1868?

A. Yes, sir; the negotiation commenced——

Q. Were prices higher then or lower than they were a year ago; was not real estate very dull in the spring of 1869—spring and summer of 1869?

52 A. Yes, sir; my impression is that it was not so good in 1869 as in 1868.

Q. The tendency is still down, is it not?

A. No, sir; I don't think it is for property along there; I think it would bring as much now as it would in 1868.

Q. You think that the estimate put on the property was a fair estimate?

A. Yes, sir; I think it was.

Q. You think that the property would pay interest on that investment?

A. Well, that I do not know; I could not say about that; it would have more of a prospective value. I suppose to some extent in the building, the way it was built; it would not rent so well as it might if it was differently fixed.

Q. Well, in the estimate of its value the building enters for at least half, does it not?

A. Well, it did not quite in that; I think they estimated the building at $125,000. I saw several gentlemen before I went into the loan, and while I was negotiating I saw several gentlemen.

Q. You think the building was estimated at $125,000?

A. Yes, sir.

Q. Is it your opinion that the building will pay 6 per cent. upon the estimate of $300,000?

A. Well, I never made an estimate of it myself; I never calculated it in that way, it did not come under my supervision exactly; that was not part of the agreement that was ever used in making the loan; but there was a general statement of the rents, by Mr. Darby—what he rented it for; I never went into that or examined it.

53 Q. Suppose it turned out that it would not pay 5 per cent. on that investment, what would you think then of the value of it?

A. Well, I do not know.

Q. Can not you answer that question?

A. I do not know; of course it would be a bad investment.

Q. That is to say, it would not be worth the money. How much is money worth, Mr. Ivory?

A. Now or then?

Q. Generally?

(Mr. Knox objected to the question as incompetent.)

Q. Then and now, how much is money worth?

A. Well, money is worth about the same now that it was when the loan was made—from 8 to 9 per cent. on first-class city loans.

Q. Is not it worth more than that?

A. No, sir; I think not.

Q. There is much less trouble in managing money than in managing property, is not there?

A. I should think so, sir.

Q. Do you remember the terms of the certificate; was it stated that the property was abundant security for $150,000, or that its value was so much?

A. That is my impression, that its value was so much.

Q. That is your impression?

A. Yes, sir.

Q. You kept no copy of the certificate?

A. No, sir.

Q. How many times did you see the certificate?

A. Well I saw the certificate two or three times; I think had it in my possession a couple of days.

54 Q. The $300,000 at that time—was that estimate, do you know, in gold or greenbacks?

A. I think in currency, then.

Q. Were greenbacks then worth us much as they are now?

A. No, sir; I think not.

Q. Do you remember what was the price of greenbacks in the summer in 1868?

A. I do not know; I never dealt in any gold.

Q. Do not you remember the rate at that time?

A. The quotations, I do not know that I can recollect at all, in 1868.

Q. In the summer of 1868 was not it from 143 to 147?

A. I think so; I think it was in the 40's somewhere.

Q. Mr. Ivory, is property which is encumbered as saleable as property which is unencumbered; or, I will add to that question: does not the possibilty of making a sale of property that is encumbered, on anything like fair terms, depend upon your finding a purchaser whom the terms of the existing encumbrance suit?

A. Well, it has something to do, I suppose, with the purchaser. A loan being on property would not affect the purchase unless it was at a higher rate of interest than was then going.

Q. When you sell property, Mr. Ivory, at what rate does the interest run on the deferred payments—what is the general rule?

A. Well, I think 6 per cent.

Q. You have made a great many sales of property in St. Louis?

A. No, sir.

Q. Have you not?

A. No, sir; I done very little in that business; my principal business has been negotiating loans and notes, and so on. I am not very familiar with the sales of property except by attending sales, and keeping myself posted for the purpose of making loans, and so on. I made very few sales.

55

Re-examined by Mr. Knox:

Q. What lot is there in St. Louis of more value, of the same number of feet, than the lot on which Darby's building is?

(Mr. Gantt objected, as it did not grow out of the cross-examination.)

A. I think it is the most valuable; there is no more valuable lot on 5th street, certainly.

Q. Were there any improvements in progress of great value on the 4th or 5th and Olive, between the time of the date of this certificate and the 24th of April, 1869, when Mr. Lucas bought the property?

A. Well, I think it would make the loan more safe—the property better—those improvements.

Q. If the improvements that had been made before the 24th April, 1869, were in progress, what effect would it have on the value of the property on the corner of 5th and Olive, known as the "Darby Building?"

A. Well, as I say, the improvements or the contemplated improvements there, those would make it more valuable.

Signature waived.

Deposition of John S. Wilson.

Deposition of John S. Wilson, taken before Henry Phillips, jr., commissioner of the United States circuit court for the eastern district of Pennsylvania, at the city of Philadelphia, Pennsylvania, the 21st day of March, 1870, on the part of complainants.

JOHN S. WILSON, of lawful age, being duly cautioned, sworn, and examined, deposes and says:

1st interrogatory. What is your name, your age, where do you reside, and what is your business occupation?

56 Ans. My name is John S. Wilson; I reside in the city of Philadelphia; I am 45 years of age; I am secretary and treasurer of the American Life Insurance Company, Philadelphia.

2nd int. Do you know the parties to this suit? If yes, how long have you known them, or either of them?

Ans. I know none of the parties to this suit.

3rd int. Do you know of a loan made on or about the month of October, A. D. 1868, on a certain property situated on the southwest corner of Olive and Fifth streets, in the city of St. Louis, and State of Missouri? If yea, state by whom, to whom, and when it was made, and the amount of the same. Do you know whether the said loan was secured by a deed of trust, and that the same was recorded? If yea, when, where, and what book is the same recorded, and who were the parties to said deed?

Ans. I know that, in the month of October, 1868, a loan was made by the American Life Insurance Company of Philadelphia to John F. Darby, of St. Louis, Missouri, of $150,000, in three deeds of trust, respectively for $60,000, $50,000, and $40,000, upon the property situated on the southwest corner of Olive and Fifth streets, in the city of St. Louis, State of Missouri. The loan was secured by three deeds of trust, as above stated, and recorded as follows: 1st, the one for $60,000, was recorded in book 367, page 529; 2nd, the one for $50,000, in book 365, page 398; 3rd, the one for $40,000, in book 371, page 186.

4th int. Did you ever see a written certificate purporting to be signed by the defendant, James H. Lucas, touching the value of the property referred to in the 3d interrogatory? If yea, when and where did you last see said certificate, and where is the same now? Can you
57 produce it; if yea, then attach the same to your deposition as an exhibit in this cause.

Ans. I have no recollection of ever having seen the certificate spoken of in this interrogatory. It is not in my possession, and I cannot produce the same.

5th int. If you shall state, in your answer to the 4th interrogatory, that you have seen said certificate, but cannot say what has become of it, or that you cannot produce it, please state if you have made any efforts to find the same. If you say that you have searched for the same, please state, when, where, and how thoroughly you have searched.

Ans. On December 20th, 1869, I made a thorough search for this certificate at the instance of Mr. Newcomb, of St. Louis. I looked everywhere for it. I searched all the contents of our fire-proof. I did not find it. I have searched again for it. I did so in the month of February, 1870. I went through other papers in addition to these already examined; also without success. About two weeks since I made a third search, equally without success. If any such paper was in existence it is now lost, and I cannot possibly find nor produce it.

6th int. If you shall state, in your answer to the 5th interrogatory, that you have searched for said certificate, and have not found the same, will you please state if the defendant's name appeared to the same, and if the value of the aforesaid property was fixed in said certificate. If so, please state what value was so fixed; give the date of said certificate and contents of the same, to the best of your knowledge, remembrance, and belief.

Ans. I can say nothing about the contents of said certificate, as I have no recollection of ever having seen it.

7th int. Did or did not the defendant in this suit ever have any
58 conversation with you in regard to said property? If yea, set

forth the particulars of such conversation, when and where the same took place, and whether in said conversation any reference was made to the value of said property, and what value, if any, was placed on the same. State, according to the best of your knowledge, recollection, and belief, the whole conversation on said occasion.

Ans. I never had any conversation with the defendant. I never saw any of the parties to the suit.

8th int. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this case; if yea, set forth the same fully and at large in your answer.

Ans. I know nothing further about the matter.

1st cross-interrogatory. If, in answer to the 4th interrogatory-in-chief, you produce any paper purporting to be signed by the defendant, state whether you have any knowledge of the defendant's handwriting, or if you know in any other way that he signed the same. State your means of such knowledge.

Ans. I do not know the handwriting of defendant, and have never seen him write.

X-int. 2nd. If, in answer to the sixth interrogatory, you state what you believe to be the contents of such paper, the paper itself being lost, or not to be found, state whether your recollection of its tenor be positive and fixed, or whether it be vague and uncertain.

Ans. I know nothing of the contents of said paper.

3rd x-int. If, in answer to the seventh interrogatory, you state that you have had any conversation with the defendant touching the prop-
59 erty described in the 3rd interrogatory, and its value at any particular time, state whether reference was made by the defendant to the medium in which that value was estimated; whether gold or legal-tender notes were mentioned in connection with the matter, and whether any opinion expressed by the defendant in relation to the value of the said property was qualified by a reference to the state of the currency then existing.

Ans. I never had any conversation with the defendant.

4th x-int. You are requested to state whether you can remember any expressions used by the defendant in such conversation, or whether all that you remember is the substance of such remarks as were made by him, or the impression produced by such remarks on your mind. If you say that you only remember the impression produced on your mind by such remarks, please state whether it was not said by the defendant that he considered the property good security for the money proposed to be lent, or actually lent, and that he felt confident that, even if the lender should have to purchase the property on foreclosing the mortgage, it would be certain to sell again for a sum at least equal to the encumbrance, interest, and cost?

Ans. I never had any conversation with defendant.

5th x-int. State whether the defendant did not say, in substance, that he considered the property as belonging to the first class of real estate in St. Louis; that it was eligibly situated, and, as far as he knew, judiciously improved, and that, if put up for sale under a proceeding to enforce the encumbrance, it would either sell for more than the debt, or else, if bought by the encumbrancee, it could be resold for more than the debt, interest, and costs, and that his opinion on this point was
60 positive. State whether that was not the substance of what the

defendant stated; and state also whether he did not say that he had heard that the owner of the property, John F. Darby, had refused the sum of two hundred and fifty thousand dollars for the same. State all that defendant said respecting this supposed offer. State, if you can, the name of the person by whom he stated that he had heard that it was made, and the opinion expressed by defendant touching the judiciousness of such offer, as well as the reason which he supposed to have influenced the party making it.

Ans. I never had any conversation with the defendant.

6th x-int. If you know any other matter or thing material to be stated on the part of the defendant in this suit and not herein enquired of, please state the same as fully and particularly as if you had been thereunto fully and specially interrogated?

Ans. I know of nothing further than I have already stated.

JOHN S. WILSON.

Deposition of Alex. Whillidin.

Deposition of Alex. Whilldin, taken before Henry Phillips, j'r, commissioner of the United States circuit court for the eastern district of Pennsylvania, at the city of Philadelphia, Pennsylvania, the 21st day of March, 1870, on the part of defendant.

ALEX. WHILLDIN, of lawful age, being duly cautioned, sworn, and examined, deposes and says:

1st interrogatory. What is your name, your age, where do you reside, and what is your business occupation?

Ans. My name is Alexander Whilldin; I reside in the city of Philadelphia; I am 62 years of age; I am president of the American Life Insurance Company of Philadelphia.

2nd int. Do you know the parties to this suit; if yea, how
61 long have you known them or either of them?

Ans. I have some acquaintance with John F. Darby; I met him in St. Louis at the time this loan was negotiated in October, 1868. I think I had never met him before and have not seen him since that time.

3rd int. Do you know of a loan made, on or about the month of October, A. D. 1868, on a certain property situated on the southwest corner of Olive and Fifth streets, in the city of St. Louis, and State of Missouri? If yea, state by whom, to whom, and when it was made, and the amount of the same. Do you know whether the said loan was secured by a deed of trust and that the same was recorded; if yea, when, where, and in what book is the same recorded, and who were the parties to said deed?

Ans. I do know that a loan was made in Oct., 1868, upon the property mentioned in this interrogatory. It was made by the American Life Insurance of Philadelphia to John F. Darby, in the month of October, 1868, and amounted to $150,000. It was secured by three deeds of trust of $60,000, $50,000, and $40,000, respectively, which said deeds were recorded as follows, at St. Louis:

1st. The one for $60,000 was recorded in book 367, page 529.

2nd. The one for $50,000 in book 365, page 398.

3rd. The one for $40,000 in book 371, page 186.

The parties were John F. Darby and Mary M. Darby, his wife, of the first part; Abial R. Newcomb and Francis Vallé, of the city of St. Louis, of the second part; and the American Life Insurance Company of Philadelphia, of the third part.

4th int. Did you ever see a written certificate purporting to be signed by the defendant James H. Lucas, touching the value of the property referred to in the 3rd interrogatory; if yea, when and where did you
62 last see said certificate, and where is the same now? Can you produce it? If yea, then attach the same to your deposition as an exhibit in this cause.

Ans. I think such a certificate was sent to our company by our agents; I think it was sent to us in the outset, preliminary to making the loan, when the application was first made. It referred to the value of the property, but I cannot remember the amount that was stated in it as the value of the property; this certificate was signed by several gentlemen, said to be judges of property, among whom, I think, was the name of James H. Lucas, the present defendant. I supposed the property to be more valuable than the amount we advanced upon it. I went out to St. Louis myself to look into the matter. I was satisfied with the property when I saw it. I do not remember to have seen this certificate after I returned from St. Louis in Oct., 1868. I cannot state where said certificate is now, and therefore I cannot produce.

5th int. If you shall state, in your answer to the 4th interrogatory, that you have seen said certificate, but cannot say what has become of it, or that you cannot produce it, please state if you have made any efforts to find the same; if you say that you have searched for the same, please state when, where, and how thoroughly you have searched?

Ans. I have searched for this certificate among my papers but can find nothing of the sort. I have searched twice within a month past in all places where I should be likely to find it; I have searched among the papers relating to the transaction; I have searched for this paper as thoroughly as I knew how; I have been unable to find it; it is the duty of the secretary to have the custody of such papers.

6th int. If you shall state, in your answer to the 5th interroga-
63 tory, that you have searched for said certificate and have not found the same, will you please state if the defendant's name appeared to the same, and if the value of the aforesaid property was fixed in said certificate; if so, please state what value was so fixed, give the date of said certificate and contents of the same, to the best of your knowledge, remembrance, and belief,

Ans. My impression is that defendant's name was affixed to said certificate, but I cannot say anything whatever as to the valuation therein fixed upon the said property. I cannot remember the date of said certificate; it must have been previous to the loan. As to the contents I cannot say positively, but the general contents was to give us some idea of the value of the property—that it was sufficient for the loan. As to the amount therein I can give no idea, except that it considerably in excess of the amount we proposed to loan them.

7th int. Did or did not the defendant in this suit ever have any conversation with you in regard to said property? If yea, set forth the particulars of such conversation; when and where the same took place, and whether in said conversation any reference was made to the value of said property, and what value, if any, was placed on the same. State, according to the best of your knowledge, recollection, and belief, the whole conversation on said occasion.

Ans. I never had any conversation with the defendant in this cause to my knowledge; I don't believe I ever saw him.

8th int. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this

your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know nothing further except that we have always con-
64 sidered ourselves amply secured.

1st x-int. If, in answer to the 4th interrogatory-in-chief, you produce any paper purporting to be signed by the defendant, state whether you have any knowledge of the defendant's handwriting, or if you know in any other way that he signed the same. State your means of such knowledge.

Ans. I am not familiar with the handwriting of defendant, and have never seen him write.

2nd x-int. If, in your answer to the 6th interrogatory, you state what you believe to be the contents of such paper, the paper itself being ost or not to be found, state whether your recollection of its tenor be positive and fixed, or whether it be vague and uncertain.

Ans. So far as I have stated in reference to the general purport of this paper, my recollection is positive and fixed. The paper itself I believe to be lost or mislaid.

3rd x-int. If, in answer to the 7th interrogatory, you state that you have had any conversation with the defendant touching the property described in the third interrogatory, and its value at any particular time, state whether reference was made by the defendant to the medium in which that value was estimated; whether gold or legal-tender notes were mentioned in connection with the matter, and whether any opinion expressed by the defendant in relation to the value of the said property was qualified by reference to the state of the currency then existing?

Ans. I never had any conversation with defendant.

4th x-int. You are requested to state whether you can remember any expressions used by the defendant in such conversations, or whether all that you remember is the substance of such remarks as were
65 made by him, or the impression produced by such on your mind.

If you say that you only remember the impression produced on your mind by such remarks, please state whether it was not said by the defendant that he considered the property good security for the money proposed to be lent, or actually lent, and that he felt confident that, even if the lender should have to purchase the property on foreclosing the mortgage, it would be certain to sell again for a sum at least equal to the encumbrance, interest, and cost?

Ans. I never had any conversation with defendant, as I have already stated.

5th x-int. State whether the defendant did not say, in substance, that he considered the property as belonging to the first class of real estate in St. Louis; that it was eligibly situated, and, so far as he knew, judiciously improved, and that, if put up for sale under a proceeding to enforce the encumbrance, it would either sell for more than the debt, or else, if bought by the encumbrancee, it could be resold for more than the debt, interest, and costs, and that his opinion on this point was positive. State whether that was not the substance of what the defendant stated; and state also whether he did not say that he had heard the owner of the property, John F. Darby, had refused the sum of two hundred and fifty thousand dollars for the same. State all that defendant said respecting this supposed offer. State, if you can, the name of the person by whom he stated that he had heard that it was made, and the opinion expressed by defendant touching the judiciousness of such offer, as

well as the reasons which he supposed to have influenced the party making it.

Ans. I never had any conversation with the defendant, as I have before stated.

66 6th x-int. If you know any other matter or thing material to be stated on the part of the defendant in this suit, and not herein enquired of, please state the same as fully and particularly as if you had been thereunto fully and specially interrogated?

Ans. I know nothing further more than I have already stated.

A. WHILLDIN.

Deposition of George Nugent.

Deposition of George Nugent, taken before Henry Phillips, jr., commissioner of the United States circuit court for the eastern district of Pennsylvania, at the city of Philadelphia, Pennsylvania, the 21st day of March, 1870, on the part of the complainants.

GEORGE NUGENT, of lawful age, being duly cautioned, sworn, and examined, deposes and says:

1st int. What is your name, your age, where do you reside, and what is your business occupation?

Ans. My name is George Nugent; I reside at the city of Philadelphia; I am 60 years of age; I am a vice-president of the American Life Insurance Company of Philadelphia.

2nd int. Do you know the parties to this suit; if yea, how long have you known them or either of them?

Ans. I know none of the parties in this action.

3rd int. Do you know of a loan made, on or about the month of October, A. D. 1868, on a certain property situated on the southwest corner of Olive and Fifth streets, in the city of St. Louis, and State of Missouri? If yea, state by whom, to whom, and when it was made, and the amount of the same. Do you know whether the said loan was secured by a deed of trust, and that same was recored; if yea, when, where, and in what book is the same recorded, and who were the

67 parties to said deed?

Ans. I know that, in October, 1868, we made a loan to John F. Darby of $150,000, in three deeds, upon the properties specified in the interrogatories. The loan was made by the American Life Insurance Company of Philadelphia to John F. Darby, on the 28th day of October, 1868, and was for $150,000, in three deeds. The said loans were secured by three separate deeds of trust recorded as follows: 1st, one for $60,000 was recorded in book 367, p. 529; 2nd, one for $50,000 was recorded in book 365, p. 398; 3rd, one for $40,000 was recorded in book 371, p. 186. The parties were, in all these three deeds, John F. Darby and wife, grantors, to Abial R. Newcomb and Francis Vallé, of the city of St. Louis, Missouri, and the American Life Insurance Company of Philadelphia.

4th int. Did you ever see a written certificate purporting to be signed by the defendant, James H. Lucas, touching the value of the property referred to in the 3rd interrogatory; if yea, when and where did you last see said certificate, and where is the same now? Can you produce it? If yea, then attach the same to your deposition as an exhibit in this cause.

Ans. I do not recollect ever having seen such certificate as is referred to in this 4th interrogatory. I do not think I ever saw such a certificate.

5th int. If you shall state, in your answer to the 4th interrogatory, that you have seen said certificate, but cannot say what has become of it or that you cannot produce it, please state if you have made any efforts to find the same. If you say that you have searched for the same, please state when, where, and how thoroughly you have searched.

Ans. In my answer to the previous question I stated that I had
68 no recollection of seeing such a certificate. I have made search for it. It is not my business to have the care or custody of such papers. If such a paper exists it would be under the control of the secretary.

6th int. If you shall state, in your answer to the 5th interrogatory, that you have searched for said certificate, and have not found the same, will you please state if the defendant's name appeared to the same, and if the value of the aforesaid property was fixed in said certificate. If so, please state what value was so fixed, give the date of said certificate and contents of the same, to the best of your knowledge, remembrance, and belief.

Ans. As I have already stated, I know nothing of any such certificate.

7th int. Did or did not the defendant in this suit ever have any conversation with you in regard to said property? If yea, set forth the particulars of such conversation, when and where the same took place, and whether in said conversation any reference was made to the value of said property, and what value, if any, was placed on the same. State according to the best of your knowledge, recollection, and belief the whole conversation on said occasion?

Ans. I have already stated that I have no acquaintance with the defendant in this suit, and I have never had any conversation with him at any time upon any subject whatever. I have never seen him.

8th int. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If
69 yea, set forth the same fully and at large in your answer.

Ans. I know nothing further than I have already stated, except that I thought the security so good and ample.

1st x-int. If, in answer to the 4th interrogatory-in-chief you produce any paper purporting to be signed by the defendant, state whether you have any knowledge of the defendant's handwriting, or, if you know in any other way that he signed the same, state your means of such knowledge?

Ans. I have already stated that I have no knowledge of any such paper.

2nd x-int. If, in answer to the sixth interrogatory, you state what you believe to be the contents of such paper, the paper itself being lost or not to be found, state whether your recollection of its tenor be positive and fixed, or whether it be vague and uncertain?

Ans. I have no recollection of any such paper or its contents.

3rd x-int. If, in answer to the seventh interrogatory, you state that you have had any conversation with the defendant touching the property described in the 3rd interrogatory, and its value at any particular time, state whether reference was made by the defendant to the medium in which that value was estimated; whether gold or legal-tender notes were mentioned in connection with the matter, and whether any opinion expressed by the defendant in relation to the value of said property was qualified by a reference to the state of the currency then existing.

Ans. I have stated that I never had any conversation with defendant.

4th x-int. You are requested to state whether you can remember
70 any expressions used by the defendant in such conversations, or whether all that you remember is the substance of such remarks as were made by him, or the impression produced by such remarks on your mind. If you say that you only remember the impression produced on your mind by such remarks, please state whether it was not said by the defendant that he considered the property good security for the money proposed to be lent, or actually lent, and that he felt confident that, even if the lender should have to purchase the property on foreclosing the mortgage, it would be certain to sell again for a sum at least equal to the encumbrance, interest, and costs.

Ans. I never had any conversation with def'd't, as I have already stated.

5th x-int. State whether the defendant did not say, in substance, that he considered the property as belonging to the first class of real estate in St. Louis; that it was eligibly situated, and, as far as he knew, judiciously improved, and that, if put up for sale under a proceeding to enforce the encumbrance, it would either sell for more than the debt, or else, if bought by the encumbrancee, it could be resold for more than the debt, interest, and costs, and that his opinion on this point was positive. State whether that was not the substance of what the defendant stated; and state also whether he did not say that he had heard that the owner of the property, John F. Darby, had refused the sum of two hundred and fifty thousand dollars for the same. State all that defendant said respecting this supposed offer. State, if you can, the name of the person by whom he stated that he had heard that it was made, and the opinion expressed by defendant touching the judiciousness of
71 such offer, as well as the reasons he supposed to have influenced the party making it?

Ans. I never had any conversation with def'd't.

6th x-int. If you know any other matter or thing material to be stated on the part of the defendant in this suit, and not herein inquired of, please state the same as fully and particularly as if you had been thereunto fully and specially interrogated?

Ans. I know nothing further in the matter.

GEORGE NUGENT.

Deposition of M. B. O'Reilly.

Deposition of M. B. O'Reilly taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

M. B. O'REILLY, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. What is your occupation?

A. Investigator of titles to real estate, and so forth.

Q. Where?

A. In the city of St. Louis.

Q. How long have you been engaged in that business?

A. I have been engaged in it for ten years.

Q. Did you make any examination of the property on the southwest corner of 5th and Olive sts., known as Darby's building, in the fall of of 1868; and if so, for whom?

A. I think not.

Q. Did you ever make any examination of that title for James H. Lucas?

A. Yes, sir.

72 Q. When?

A. It was in April, 1869.

Q. Yes; I am mistaken myself. Well, did you ever make any report of that examination to Mr. Lucas?

A. I think we did; I am pretty sure we did.

Q. If so, will you state whether or not all of the encumbrances that had ever been put on the property, were noticed to him by Mr. Darby?

A. By Mr. Darby? Oh! that is another thing. Well, I cannot recall what point to start at, but my recollection is he gave us a point at starting, and beyond that we had not to go. I guess, likely, it included Mr. Darby's transactions.

Q. What is your best recollection about securing all Mr. Darby's personal property?

A. Well, I cannot recall, but the certificate, which I issued, recites the fact, and states whatever we intended to say.

Q. Have you no recollection in relation to whether it contained all the encumbrances ever put on the property by Mr. Darby or not?

A. Well, the only thing that fastens it on memory; we keep no copy of a partial certificate; we keep the chain of title on which it is passed; hence the certificate itself is the only thing that tells the exact time, but this fact is partially in my memory, that he gave us some deed of trust; some given point to start from; I know it was right there, to start there, from that to the present time; because I find an entry on the book charging for posting—not examining.

Q. Do you know whether they ran back 10, 20, 30 or two years, or one year?

73 A. I think it ran back—it is difficult to recall a date—but I think it ran back to 1849, probably.

Signature waived.

Deposition of George C. Kehr.

Deposition of George C. Kehr, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

GEORGE C. KEHR, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. Where do you reside?

A. In St. Louis.

Q. Do you know John F. Darby?

A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him a number of years.

Q. What is your occupation?

A. I am a stock broker.

Q. State, if you know, anything of Mr. Darby's paper being negotiated by brokers during 2 or three years previous to his failure, and to what extent?

A. I negotiated some of it myself, and some of it through other parties; it was not very hard to be had.

Q. How long a time previous to his failure did his paper get into the hands of brokers to negotiate?

A. About two or three years.

Q. To what extent did you negotiate, as well as you remember?

74 A. Well, I do not know exactly. I can count it up $30,000 or $40,000, if not more.

Q. How much of that was in the year before his failure?

A. Probably $25,000 or $30,000; I do not care to state exactly.

Q. State to what extent it was in the hands of other brokers, besides yourself, of your own knowledge?

A. Well, I cannot state of my own knowledge—only what they told me; Mr. Stagg had a good deal of his paper.

Q. Did you see it in the hands of other brokers?

A. I did not see the paper. I saw memorandums of the paper; parties would ask me if I could place it for them.

Q. How many street brokers had the paper memorandums offering for sale, to your knowledge?

(Mr. Gantt objected.)

A. Well, there was some four or five, I believe; a good many spoke to me about the paper different times, and asked me "Well, Kehr, can you place a piece of paper to-day?" I would ask what it was. "Well, it is so and so." "Well, I cannot do it. I can get that paper myself to place without dividing commissions with you."

Q. What rate was his paper discounted at 2 years before his failure?

(Mr. Gantt objected.)

Ans. Well, various rates; it would depend something on the condition of the market what the paper sold at; if the money market was close, paper went at a pretty heavy discount.

Q. How heavy was the heaviest?

A. 12, 15, and 18 per cent., and, put the commissions in, it would bring it up 2 or 3 per cent.; a man negotiating paper has to pay the broker one per cent. with the discount at 12 or 15, and then one per cent. to the brokers; it makes it a pretty heavy discount.

Q. What proportion of his paper was sold at 15 and 18 per

75 cent. discount?

A. Well, I sold one piece with your (Mr. Knox's) endorsement on it, I believe, at 15 per cent.; two pieces I know of, to a gentleman that is dead now; of course, there was not any paper went at 10 per cent.; you very seldom find paper that gets on the street, that goes at 10 per cent.; I can assure you of that fact; it very rarely occurs; we always expect to get a higher rate for *keiting* paper; that is always considered a high rate paper; I suppose you are aware of that fact; bankers throw it on the street and it is considered *keiting* paper; of course, it is worth whatever a man can get for it.

Q. Do you know anything about Mr. Darby's efforts to sell Darby's building, corner of 5th and Olive; and if so, what do you know about it?

A. Well, I was operating with Mr. Darby once very heavily in stocks, and had a sad experience with that gentleman myself, and got fearfully crippled and broke; I turned my attention then to something else. Mr. Darby told me one morning, says he, "Kehr, I wish you would sell that property corner of 5th and Olive." (Mr. Gantt objected to this portion of the answer.) Says I, "All right, Mr. Darby; I believe I can sell that piece of property for you if you will put it down low enough. Says I, "What

is the price?" Says he, "$250,000." I immediately came up and spoke to Henry Gaylord; says I, "Henry, I wish you would step up and take a look at that property, and I believe we can sell it." I thought it was cheap at $250,000, in connection with the improvements to be made here, and so forth. Well, we looked at the property. Finally I stepped down and saw Hugh and Robert Campbell; they were in the store. Says I, "Mr. Campbell," (I usually, when I have anything very good and very choice, go down and give them an opportunity, because they are
76 monied men and have money ready to invest,) I said to Mr. Campbell, "Mr. Campbell," (in a casual kind of a way, I did not want to come right out and say the property was for sale,) says I, "I wish, as you pass by 5th and Olive, you would take a look at that Darby property and see what you think about it." Says he, "All right, Mr. Kehr, I will do so." In a few days after that I happened in there again, and says I, "Have you been to look at that property?" Says he, "Yes; I looked at it." Says I, "What do you think of it?" Says he, "I do not know; I don't know as I care about buying the property particularly; I would buy at a bargain, of course." Says he, "What is the price of it?" Says I, "$255,000." I put on a bold front, thinking I would fall $5,000 if necessary, or a small amount, as I usually do in selling property—talk a little more about it, and then fall a little more. "Well," says he, "I do not know as I want it at present." I thought to myself then, "I will not say any more just at this time."

Mr. GANTT. What is that?

Ans. I thought that I would not press the property at that time; Mr. Darby did not want me to do it; he did not want everybody to know that the property was going to be sold; he gave me that instruction, not to talk about the property or the price, except in that way, for fear it might affect his credit if people would hear that he was selling out his property; that they might think the devil was to pay, and so on, and so forth. Well, I came up to the store and says I, "Mr. Campbell, I wish you would think of this thing; just think of it; I may want you to make an offer on this property." He said "All right." I came out and came up to Mr. Vallé at Mr. Darby's bank, and spoke to Mr. Vallé, and says I, "Mr. Vallé, I have been talking to a party about that property, and I would not wonder, if Mr. Darby would come down, but that
77 I could sell."

Mr. GANTT. What is that?

Ans. That if Mr. Darby would fall in his price that I might be able to sell the property. "Why," says he, (Vallé,) "Mr. Darby has sold it." "Well," says I, "now I would have got myself in a nice fix; he gave me instructions to sell that property, and if a man had taken my offer, I would have got myself in a nice scrape." Says I, "What did he get for it?" "Why," says he, "he just sold it." And in a moment after Mr. Hodgman came out of the office from where Mr. Darby usually staid, and passed by me. Says I to Mr. Vallé, "Has he just sold it to Mr. Hodgeman?" And says he, "Mr. Hodgeman sold it for him." "Well," says I, "What did he get for it?" Says he "I believe the price was fixed at $200,000." Says I, "My God! I can sell that property for more than that." I went in to see the old man. Says I, "Have you sold that property?" Says he, "Yes." Says I, "Why, I can sell that property for $255,000;" and says I, "If you have not signed the papers or anything of the kind, you had better let them hold on, and give me an opportunity; I can certainly realize $25,000 more than you have got." Says he, "I have given my word." And then he flew into a terrible passion in relation to people, after property is sold, always run-

ning, ready to tantalize them with better bids. Says he, "The citizens of St. Louis always knew that property was for sale, and now they wonder at my selling it." And he talked so much and seemed to feel in such a passion that I never said anything more about it. That evening I came up, and I met Mr. Campbell, and we came along down the street, and says I, "Mr. Campbell, I am sorry to inform you that property was sold to day. Says he, "Who bought it?" Says I, "Mr. Lucas." Says he,
"What did he give for it?" Says I, "$200,000." "Why," says he,
78 "That is quite a sacrifice; quite a sacrifice." And he seemed to be surprised that the property was going for any such price.

Q. Which Campbell was that?

A. Robert.

Cross-examined by Mr. Gantt:

Q. Mr. Campbell did not accept the offer of $250,000?

A. No, sir.

Q. But from his demeanor you thought Mr. Darby would fall $25,000 himself?

A. Yes, sir; there is one thing I have omitted which I meant to have stated—I wish to state it all—that after I learned, then I went in and saw Mr. Vallé—Hodgeman was talking to Vallé; I ran up to Mr. Campbell's, and I told Mr. Campbell that Mr. Hodgeman was negotiating for that house; says I, "You had better make me an offer immediately, and I will go down there and try to effect the sale before Mr. Hodgeman gets that property for Mr. Lucas." Vallé told me they were negotiating, and I told Mr. Campbell that, and says he, "Mr. Kehr, if I could get that house for $50,000 less than it is worth, I would not interfere with another man's trade."

Q. Did not Mr. Campbell say he would have given $200,000 for it?

A. No; he did not make that remark to me; he never put any price on the property at all.

Q. How long before the sale was made was it that Mr. Darby first put it into your hands for sale?

Ans. Three or four days.

Q. As much as a week?

Ans. No; only three or four days.

79 Q. And it is your opinion that if he had let your work it, and not interfered with you, you could have got $220,000 or $225,000 for it?

Ans. Very readily, sir; I am very certain.

Q. Mr. Kehr, have you had any experience in the real-estate market in St. Louis, for the last 2 years?

A. Well, I have, for the last 10 years, bought and sold a good deal.

Q. Is not the real-estate market exceedingly dull and depressed at this moment?

A. Well, sales have not been as large as they were last summer.

Q. Has not it been hard to make sales, and hard to get good prices?

(Mr. Knox objected.)

Ans. Yes, sir.

Q. Was not it harder to make sales and get good prices in the spring of 1869 than it was in the spring of 1868?

A. No, sir; I could have sold Darby's house——

Q. I am not speaking of that house. Then you think that real estate was not tighter in 1869 than it was in 1868?

A. No, sir.

Q. How was it in 1868, as compared with 1867?

A. Well, I think there was a slight improvement through 1867. After the war closed property was very much depressed.

Q. The war closed about 1865, did not it, and was not there great activity on real estate in the spring of 1866?

A. Some property was selling then.

Q. Was it not more active in the spring of 1866 than since?

A. I think not; no, sir. I think property was generally depressed for two years after the war, for, I know Almon Thompson offered property on Chestnut st., in 1866, for $9,000, and sold it in 1869, for
80 $11,000 or more. I know the property that Stagg bought, in 1866, on Chestnut st., that property next the Republican office, for $7,000, and he was offered, in 1869, 24,000.

Question. But property, as a general thing, was quite buoyant in 1869?

A. Yes, sir.

Q. Property was buoyant in 1869, but better in 1868 than in 1869?

A. Yes, sir.

Q. Better in 1868 than in 1867?

A. Yes, sir.

Q. And that, you give as your recollection?

A. Yes, sir.

Q. And you feel pretty confident of that?

A. Only from my own experience.

Q. And your observation of the market; you give that as the condition of the market?

A. Yes, sir.

Q. And with confidence?

A. I do with great confidence. I wanted to say just now in relation to property that Mr. Britton bought for $17,000 the other day, I could have sold it very readily for $22,000 last year, and offered Mr. Darby $22,000 for that same piece of property that was sold the other day for $17,500. I could have got him $25,000, and he asked $32,000 for it.

Q. When?

Ans. In 1869.

Signature waived.

Deposition of Francis Vallé.

Deposition of Francis Vallé, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of
81 Missouri, at the city of St. Louis, in said county and State, on the part of the complainants.

FRANCIS VALLÉ, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. Where do you reside?

A. In St. Louis.

Q. What is your business?

A. Book-keeper.

Q. How long have you been engaged as a book-keeper?

A. Since the fall of 1865.

Q. Do you know John F. Darby?

A. I do.
Q. How long have you known him?
A. 24 years.
Q. Were you ever in his employment?
A. Yes, sir; first from '46 to '52; then from '65 to the time he failed.
Q. What were you doing?
A. Keeping his books.
Q. What business was he engaged in during that time?
A. Banking and law business.
Q. What other employees did he have besides you, while carrying on the banking business?
A. At first, he Mr. Robert H. Thompson, F. Emehl, Mr. Graves, his sons Walter H. and Caswell F. Darby, and Ben. Darby.
Q. All engaged at the same time?
A. No, sir; at different times.
Q. For a year previous to his failure, I mean, what persons did he have in his employment in the banking-house?
82 A. Only his son Ben. and myself.
Q. How long a time before his failure did he only employ his son Ben. and yourself in his business?
A. About 13 months, sir.
Q. How old is his son Ben?
A. He is a boy about 18 years, I think?
Q. What did he do about the establishment?
A. He was collecting; also paying out money, receiving it, and so forth, when I was too busy at the desk—I am wrong; Mr. Thompson was there in July and August, 1869; about 6 or 7 months only before he failed Ben. was there.
Q. Was Mr. Thompson there after Ben came?
A. No, sir.
Q. Then Mr. Thompson left how long before he failed?
A. 6, or 7, or 8 months.
Q. Was Mr. Darby's business large or small?
A. Well, sir; rather a small business.
Q. During the whole period of time?
A. Yes, sir; as far as I know of the concern, I mean.
Q. If you ever came to a conclusion as to his solvency or insolvency, when did you first come to it?
(Mr. Gantt objected as irrelevant.)
A. I think for two years previous to his failure, I thought he was much embarrassed; I judged so from the appearance of the books, and the trouble he had in getting money.
Q. How did he get money?
A. Well, sir; really he never told me, and I never had any of that part to do; but once or twice that I had notes with Mr. Knox and Mr. Brotherton as endorsers on it, I took them to Mr. Stagg to have
83 him raise the money for him; I think it was 3 or 4 times altogether.
Q. Do you know anything in relation to the existence of paper that he had on the street, in the hands of street brokers?
A. I heard others speak about the amount, a good deal, that he had, but I never knew anything of my own knowledge. Mr. Stagg would come in with money, and tell me to place it to Mr. Darby's credit, and Mr. Darby would bring the money that I supposed was from discount; but I do not know of my own knowledge.
Q. How long before the failure had he been in the habit of raising money through Mr. Stagg?

A. From the time I went in; I do not know how long before.
Q. What was Stagg's business?
A. Money broker.
Q. Street broker?
A. Street broker. Yes, sir.
Q. How was it in relation to Mr. Darby's deposits? Did he have any persons depositing with him during the last years of his business?
A. Yes, sir; a good deal deposited—$140,000 or $150,000.
Q. Deposited during the last year of business?
A. Yes, sir.
Q. Were the checks drawn by his depositors honored at all times?
A. Yes, sir; always, after some little hesitancy; sometimes had to get the money to pay them.
Q. Had to get money where?
A. That I do not know.
Q. What amount of cash was subject to draft in Darby's bank, or the average, during the last years he was in business?
(Mr. Gantt obj. as irrelevant and incompetent.)

84 A. I can hardly remember that. If I had the book here I could come pretty close to it.

Q. How much cash had he on hand on the average during the year to meet drafts?
A. A very small amount; I do not suppose, on the average, $5,000 at any one time.
Q. Whenever drafts first presented that he had to go raise money to pay money subject to check?
A. Well, sir, he had several during the time I was in there. Some 5 or 6 months before he failed, I had to go to pay a check after banking hours at the Second National Bank.
Q. What was the amount?
A. $150 or $175, somewhere; it was a small check, but I cannot remember the amount; I do not think $200.
Q. How often were small checks presented there that were not paid, the last year or two he was in business?
WITNESS. Immediately, you mean?
COUNSEL. Yes; on presentation.
A. Well, I suppose 10 or 12, may be more. It is impossible for me to remember now. I know it plagued me very often a great deal. It vexed me to think we had to put them off.
Q. How was it with checks as small as $50? Were they always paid?
A. I do not remember. I do not think we ever got quite that low down. I think the $150 or $175 check I have mentioned was the lowest that we ever put off?
Q. Do you know the amount of Darby's banking liabilities to depositors at the time of his suspension?

85 A. 10 or 12 months ago, or later, it is hard to remember. I think somewhere about $140,000 deposits and certificates of deposit. I do not remember now whether the certificates were all included in the $140,000 or not. I know somewhere in the neighborhood, deposits and certificates together.

Q. Will you state, during the time you were with him, whether his notes were in the hands of street brokers only occasionally or continuously.
Ans. Continuously—very often; I do not suppose, hardly a week passed.

Q. Among bankers did you often hear his solvency questioned a year or two before his failure?

(Mr. Gantt objected as leading.)

A. I do not think I heard bankers speak of it at all.

Q. What was the common talk of the people you heard speak of his pecuniary condition?

A. They often asked me if the old gentleman was not much embarrassed; that they heard his notes were on the street. When a person would ask me that question, of course, I always denied those things to save the old gentleman's credit.

Q. How long a time was that done?

A. I suppose two years.

Q. Had you a knowledge the extent his real estate was encumbered?

A. No, sir; I knew there was a big encumbrance on those two—the corner of 5th and Olive, and on the Main-st. property, where the bank was; but I did not know as to the other.

Q. Do you know anything of his feelings of apprehension of any action being taken against him by his creditors?

(Mr. Gantt objected as incompetent and irrelevant.)

A. Five or six months before he failed, I know he was quite uneasy about Mr. Polk's calling for his money.

Q. What was his apprehension about that?

86 A. Why, he did not think he could raise the money to meet them.

Q. Was anything said about the consequences of not getting it?

A. That it would break him. He has always remarked that he was trying to sell his mines; that if he could only sell his mines for $100,000, he could meet those things.

Q. How was it in relation to his having money at the East, subject to his draft to any extent?

A. Not a great deal, sir; never had but very little there, after I took charge, for the last year before his failure.

Q. What was the greatest amount, to your best recollection, that he had on hand in his bank during the three months previous to his failure?

A. Well, some $50,000 or $60,000 at one time, I think, was the most he ever had, that is, when he sold this building, and that was only for three days, however.

Q. Sold what building?

A. This Darby's building, corner of 5th and Olive.

Q. How long did that remain there?

A. A very few days; it was drawn for immediately—debts that he owed. He owed some $6,000 or $8,000 in New York, $6,000 in Philadelphia, and he paid them right away—paid, I believe, the very day I got back from Ste. Genevieve, on the day he received his money. I got the checks when I came home.

Q. Throwing that out of account—the proceeds of the sale of Darby's building—how much money did he have on hand at any one time during the last three or four months he was carrying on business?

A. It is pretty hard to remember; but I do not think he ever had over $5,000 on an average.

87 Q. What would be the average, in your opinion, according to your best recollection, that he ever had on hand?

A. Probably he might have $5,000 to-night, and $100 the next night; and may be the next day $10,000, and it would be drawn out before 12

A. From the time I went in; I do not know how long before.
Q. What was Stagg's business?
A. Money broker.
Q. Street broker?
A. Street broker. Yes, sir.
Q. How was it in relation to Mr. Darby's deposits? Did he have any persons depositing with him during the last years of his business?
A. Yes, sir; a good deal deposited—$140,000 or $150,000.
Q. Deposited during the last year of business?
A. Yes, sir.
Q. Were the checks drawn by his depositors honored at all times?
A. Yes, sir; always, after some little hesitancy; sometimes had to get the money to pay them.
Q. Had to get money where?
A. That I do not know.
Q. What amount of cash was subject to draft in Darby's bank, or the average, during the last years he was in business?
(Mr. Gantt obj. as irrelevant and incompetent.)

84 A. I can hardly remember that. If I had the book here I could come pretty close to it.

Q. How much cash had he on hand on the average during the year to meet drafts?
A. A very small amount; I do not suppose, on the average, $5,000 at any one time.
Q. Whenever drafts first presented that he had to go raise money to pay money subject to check?
A. Well, sir, he had several during the time I was in there. Some 5 or 6 months before he failed, I had to go to pay a check after banking hours at the Second National Bank.
Q. What was the amount?
A. $150 or $175, somewhere; it was a small check, but I cannot remember the amount; I do not think $200.
Q. How often were small checks presented there that were not paid, the last year or two he was in business?
WITNESS. Immediately, you mean?
COUNSEL. Yes; on presentation.
A. Well, I suppose 10 or 12, may be more. It is impossible for me to remember now. I know it plagued me very often a great deal. It vexed me to think we had to put them off.
Q. How was it with checks as small as $50? Were they always paid?
A. I do not remember. I do not think we ever got quite that low down. I think the $150 or $175 check I have mentioned was the lowest that we ever put off?
Q. Do you know the amount of Darby's banking liabilities to depositors at the time of his suspension?

85 A. 10 or 12 months ago, or later, it is hard to remember. I think somewhere about $140,000 deposits and certificates of deposit. I do not remember now whether the certificates were all included in the $140,000 or not. I know somewhere in the neighborhood, deposits and certificates together.

Q. Will you state, during the time you were with him, whether his notes were in the hands of street brokers only occasionally or continuously.
Ans. Continuously—very often; I do not suppose, hardly a week passed.

Q. Among bankers did you often hear his solvency questioned a year or two before his failure?

(Mr. Gantt objected as leading.)

A. I do not think I heard bankers speak of it at all.

Q. What was the common talk of the people you heard speak of his pecuniary condition?

A. They often asked me if the old gentleman was not much embarrassed; that they heard his notes were on the street. When a person would ask me that question, of course, I always denied those things to save the old gentleman's credit.

Q. How long a time was that done?

A. I suppose two years.

Q. Had you a knowledge the extent his real estate was encumbered?

A. No, sir; I knew there was a big encumbrance on those two—the corner of 5th and Olive, and on the Main-st. property, where the bank was; but I did not know as to the other.

Q. Do you know anything of his feelings of apprehension of any action being taken against him by his creditors?

(Mr. Gantt objected as incompetent and irrelevant.)

A. Five or six months before he failed, I know he was quite uneasy about Mr. Polk's calling for his money.

Q. What was his apprehension about that?

86 A. Why, he did not think he could raise the money to meet them.

Q. Was anything said about the consequences of not getting it?

A. That it would break him. He has always remarked that he was trying to sell his mines; that if he could only sell his mines for $100,000, he could meet those things.

Q. How was it in relation to his having money at the East, subject to his draft to any extent?

A. Not a great deal, sir; never had but very little there, after I took charge, for the last year before his failure.

Q. What was the greatest amount, to your best recollection, that he had on hand in his bank during the three months previous to his failure?

A. Well, some $50,000 or $60,000 at one time, I think, was the most he ever had, that is, when he sold this building, and that was only for three days, however.

Q. Sold what building?

A. This Darby's building, corner of 5th and Olive.

Q. How long did that remain there?

A. A very few days; it was drawn for immediately—debts that he owed. He owed some $6,000 or $8,000 in New York, $6,000 in Philadelphia, and he paid them right away—paid, I believe, the very day I got back from Ste. Genevieve, on the day he received his money. I got the checks when I came home.

Q. Throwing that out of account—the proceeds of the sale of Darby's building—how much money did he have on hand at any one time during the last three or four months he was carrying on business?

A. It is pretty hard to remember; but I do not think he ever had over $5,000 on an average.

87 Q. What would be the average, in your opinion, according to your best recollection, that he ever had on hand?

A. Probably he might have $5,000 to-night, and $100 the next night; and may be the next day $10,000, and it would be drawn out before 12

o'clock next day, and that is the reason it is hard to remember; he never had any regular account; he raised money as he could to meet the engagements at the time.

Q. Do you know of any attempts made by him to sell exchange on East?

A. Yes, sir; he sold exchange on the East sometimes, and raised money to meet it afterwards.

Q. Drawn against what, was that kind of exchange—against funds in the East?

A. No, sir; not drawn against any funds; he expected to raise the money by discount or otherwise.

Q. How long a time was he in the habit of doing that kind of business?

A. Well, sir, I do not know; I suppose a year before; may be more; occasionally; very seldom, except towards the last, it was more common.

Q. When did it become more common; how many months before he failed?

A. Probably a month; probably the month of February; I cannot remember the time.

Q. How frequently, then, were these sort drafts?

A. Not often; I suppose half a dozen, or 10, may be.

Q. What amount would be the largest amount he drew that way?

A. I think $7,500 was the largest, in two drafts, in one day.

Q. Do you know to whom those drafts were sold?

88 A. One to the Third National Bank, and one to the Trader's Bank.

Q. At what rate?

A. The usual rate, sir; the regular rate of exchange at the time.

Q. Had Mr. Darby any partner the last two years of his business?

A. No, sir; the last two years you mean?

COUNSEL. Yes, sir.

A. The last two years—the last year he did not; the 1st of January, 1868, Mr. J. M. P. Nolan went out.

Q. Had he any capital in the bank?

A. No, sir.

Q. Were the notes that he put in the hands of street brokers ever entered on any books to your own knowledge?

A. No, sir; I had no knowledge of them from my position as bookkeeper.

Q. State whether or not it is the custom by bankers and business men to have notes that were discounted, that were sold, entered?

A. Yes, sir; I believe it is, generally, where a person is doing business by himself to have everything go through his books.

Q. The class of Darby's depositors—were they active business men, or otherwise, the last year he was in business?

A. No, sir; very few active business men had deposits there?

Q. Do you know what was the cash capital of the banking-house?

A. $5,000.

Q. What amount of the $140,000 that was due to depositors at the time of his failure was subject to sight check?

A. Now, that is what I cannot remember, whether $140,000, or $140,000 less the certificates of deposit; I cannot remember, because my mind has been engrossed by other business.

89 Q. What proportion did the certificates of deposit have to the whole amount due to the depositors?

A. I suppose a little more than half, I guess.

Q. Then, in relation to other money that was not in evidence by certificate of deposit, was that subject to check or not?

A. Well, a certificate of deposit; a great many of them were payable on sight too; Mr. Polk's $40,000 was subject to be paid on demand; and Mr. Inge's $10,000 was a demand certificate.

Q. Do you know of any complaints having been made by the holders of the certificates at any time for the money?

A. Only what Mr. Darby told me—that Mr. Polk wanted some $10,000; and I think that was once he said he did not know where he could raise the money; that he would have to hurry round to see if he could make a raise of the money to meet it if he called on him for it, as he expected he would, and he did not know how he would raise it.

Q. How in relation to Inge?

A. He never called for money that I know of.

Q. Was this money subject to sight check bearing interest or not?

A. Some of it was; yes, sir, most of it.

Q. State whether or not it was common for bankers of good reputation to pay interest on money subject to check.

A. Yes, sir; a good many bankers do it; 4 per cent. we generally paid.

Q. How in relation to the certificates of deposit; what was the highest rate of interest on those?

A. We paid some 6 and some 10; the largest was one of 10 per cent.

Q. Did you know at the time Mr. Darby sold his building to Mr. Lucas?

A. I did not know it till after the sale was made, sir.

90 . Q. Did you know, then, that he was informed anything in relation to another person who was ready to take it at an advanced price?

A. No, sir; not till after the sale was made.

Q. How soon after?

A. The next day; the sale was consummated on Saturday; I came back on Monday; and Tuesday, Mr. George Kehr——

Mr. GANTT. You need not state what Kehr said.

WITNESS. I do not think he told Mr. Darby anything; but he told me that Robert Campbell would have given more for it.

Mr. KNOX, (resuming.) How often were checks drawn, according to your recollection, during the last three or four months of Mr. Darby's failure, against him?

A. Well, sir, drawn as usual, as checks were presented.

Cross-examined by Mr. Gantt:

Were these irregularities, these shifts for raising money, in the tottering condition of Mr. Darby's credit, known to the community at large, or only to those behind the scenes?

A. As I told Mr. Knox, I had been asked on the street several times if Mr. Darby was not embarrassed very much, and I told them no, as a matter of course.

Q. Do you know that anybody, outside of Mr. Darby's office, knew of the shifts to which he was forced to resort for ready money?

A. No, sir; not that I am aware of.

FRANCIS VALLÉ.

Deposition of John F. Darby.

Deposition of John F. Darby, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

91 JOHN F. DARBY, of lawful age, being duly examined, cautioned, and shown, deposes and says:

Examined by Mr. Knox:

Q. What is your business, Mr. Darby?

A. I am a lawyer.

Q. What was your business in 1868?

A. I was carrying on banking business then.

Q. In the fall of 1868 did you make any loan of the American Life Insurance Co. of Philadelphia; and if so, for what amount?

A. Yes, sir; I think about the middle of September, some time before that, perhaps, I had been talking with Mr. W. W. Ivory, and through him got acquainted with the Messrs. Newcomb, agents for the American Life Insurance Co. of Philadelphia. I wanted to borrow $150,000 on that property on the southwest corner of 5th and Olive st., 5 years.

Q. Well, sir, what was done in relation to that matter?

A. I made application for the loan through Mr. Ivory, and through Messrs. Newcomb. I had a good deal of correspondence. I wrote letters to them, and they came to see me personally at my office about it, two or three of them, at different times; finally effected the loan. The president of the company came out here, went to look at the property, came to my office to see me, went up and talked with people about it, went to see Colonel Britton at the Bank of the State of Missouri, and I effected the loan after he came here.

Q. Was there any certificate of value obtained for this company; and if so, who signed the certificate?

A. Well, when I first made application to the parties to borrow the money, they suggested, I believe, that I had better get some one to put a valuation on the property. I got up a certificate of that sort, and I sent Mr. Frank Vallé around to get Mr. Lucas to sign it.

92 Mr. Vallé—he was my cashier and book-keeper—he was gone a good while, and said he could not wait; Mr. Lucas was not in, and he came back. Afterwards, the same day, I think I told him to give me the paper and I would go and get Mr. Lucas to sign it. My intention was to get Mr. Lucas, Judge Brotherton, Colonel Britton, and two or three other persons, whom I thought were men of character and standing, to sign it; I took it round. I drew up the paper myself, took it round—a certificate in substance, that the property was worth about $300,000, describing the proprety, and I asked Lucas if he would sign it. He said yes; said he considered the property cheap at that; took his pen and signed the paper. I then took the paper up to Colonel Britton, asked Colonel Britton if he would sign it. Colonel Britton read it over, saw Mr. Lucas' name there, and Colonel Britton himself signed it. I think I went over to Judge Brotherton, but I could not find him, and they were in a hurry to get the paper, and I enclosed that paper, so signed by Mr. Lucas and Colonel Britton, to the Messrs Newcomb here, in connexion with Mr. Ivory. I addressed them a letter, acting in concert with Mr. Ivory; did not want to appear to be acting in connection with one party, but all three together. I inclosed that notice to them, and told

them I made a formal application for a loan of $150,000, 8 per cent. interest, and my first proposition was to make it at 3 years, 5 years, and 7 years, I think, making $50,000, or about $50,000 on each house; but, when I did make the loan I made it in three separate sums: $60,000 on the corner house, $50,000 on the middle house, and $40,000 on the other; the separate loan for these amounts secured by a deed of trust.

Q. I do not care about the minutia of that at all. Who, do
93 you say, signed the certificate you speak of?

A. I say Colonel Britton and Mr. Lucas.

Q. What did Mr. Lucas say as to the value, when he signed the certificate?

A. He said he considered it richly worth that, or cheap at that.

Q. Will you take that paper, Mr. Darby, and state if you recognize what it is? (handing a paper to the witness, marked Exhibit A.)

A. This is a copy of the two letters from the letter-book—of the letters I addressed to Messrs. A. R. and C. M. Newcomb, acting in concert with Mr. Ivory, both dated 14th September.

Q. How do you know they are copies?

A. I copied them from the book myself.

Q. Can you state now the purport of the certificate signed by James H. Lucas and J. H. Britton, that you have spoken of?

A. Well, I cannot give an exact copy of it from memory, but I know in substance what it was; and the substance of it is about what I stated to you here before in this paper. The general tenor and effect of it was about what I stated to you here, which I made out for you at your request.

Q. Who drew the certificate signed by them?

A. I drew it.

(Paper attached to this deposition, and marked Exhibit B.)

I do not say that this is a copy; that is about the purport and substance of it. I wrote that for Mr. Knox.

Q. Are you able to state as to the general tenor of the certificate signed by Mr. Lucas and Colonel Britton?

A. Well, I think that is about the general tenor and purport of it.

Q. How long have you been acquainted with James H. Lucas, Mr. Darby?

94 A. Well, I had seen Mr. Lucas for the first time, I think, about the year 18——between 1830, and 1831 and '2, but I became intimately acquainted with him about 1840. I had know his father, and his family, and Mrs. Hunt. His father was a great friend of my father's; I had been at his house with my father, practiced law with his brother William, and William used to come to my office, and make it a stopping place. By that means, I became acquainted with the family, but James went to Arkansas, and did not return here to live until 1840. But I was very well acquainted with Mrs. Hunt, his sister, and all the other members of the family; knew Adrian, William, and the old man, the father.

Q. Was Mr. Lucas connected with any banking institutions here in 1868?

A. Not that I know of, further than as a stockholder. I suppose he was a stockholder in some of them.

Q. Not director in any?

A. I do not know that he was; he might have been.

Q. Did Mr. Lucas ever engage in the banking business here?

A. Yes, sir.

Q. For how long a time?

A. I think Lucas went into the banking business in 1852, in this city, with John Simons, junior.

Mr. GANTT. Junior?

A. Yes, his name was John Simons, junior; John Simons' father used to live here. They called him John Simons, junior; that is the name he went by till the old man died.

Mr. KNOX, (resuming.) Up to what time did he remain in the banking business?

95 A. Mr. Lucas remained in the banking business——he went opening banking-house here in 1852. He opened a banking-house in San Francisco; then afterwards he changed his banking-house here to James H. Lucas & Co., taking in Henry L. Patterson, Major Turner, and General Sherman, and the other house too; then he continued in the banking business until September, 1857, when he closed his doors.

Q. How far was his banking-house from yours in 1856 and 1857?

A. It was just one square in 1856 and 1857. He was at the southwest corner of Chestnut and Main st., and ours was on the southwest corner of Pine and Main st.

Q. How far was his office from your banking-house in the spring of 1869?

A. Well, he had his real-estate office (he quit banking) in the building on the southwest corner of *Main* and Main st., and I had my office on the southwest corner of Olive and Main st.

Q. All I want to know is the distance?

A. Well, it is two squares.

Q. Did Ja's H. Lucas ever own the property on which is situated Darby's building?

A. Never.

Q. Did his father?

A. His father owned it; made a gift of it to Mrs. Hunt, his daughter, and she sold it.

Q. Will you state how extensively James H. Lucas has been and is the owner of property between Chestnut st. and Locust st?

A. Well, John B. C. Lucas owned the 40 arpent lots, the centre line of which divided the square on which the court-house is, and it

96 runs up to St. Charles st., I think, and he owned all that property. Then he divided it in 1816 with Colonel August Chouteau, and made an addition to the town. Then Lucas kept selling off property all along, at various times, and when he *did*, I believe he had made a gift to his son, James H. Lucas, of 50 acres, or 50 arpents; I saw it marked on the plat as that; then the balance of the 40 arpent lots, as far as they extended, ran out to the end of the 40 arpent lots, Stoddard addition, that is now, that passed, I understood, to Mrs. Hunt and Mr. Lucas by descent, or by devise.

Q. How extensively is he the owner of property on Main st. and 4th and 5th sts.?

A. Well, I do not know of any great amount of property he owned on Main st., except where his banking-house was, which he bought from McKenzie.

Q. Well, on 4th street?

A. He owned a good deal of property on 4th street. He owned property beginning at Chestnut st. and running clear to Pine st., on the east side of 4th st. He owned a large amount of the property on which the Planters' House is situated, opposite; then he owned some property in the block between Olive and Locust st., on 4th st.

Q. Who, if anybody, in St. Louis, is better acquainted with the value of central property than James H. Lucas?

A. I do not know that anybody is.

Q. When did you first know that Mr. Lucas desired to buy your property on the corner of 5th and Olive?

A. I did not know that he wanted to buy it at all. Mr. Hodgeman, cashier of the Boatmans' Saving Institution, who is dead, applied
97 to me to purchase it and came to see me in behalf, and in the name of, Mr. Lucas.

Q. How long before the sale was it he came to you, Mr. Lucas?

A. Well, it was a month or two.

Q. Was anything said by him touching the reason why he came?

A. He did not come to see me himself; he sent Hodgeman.

Q. I speak of Hodgeman?

A. Well, Hodgeman came; he was going backward and forward, reporting to me from time to time, as he would see Mr. Lucas. Mr. Lucas did not come to see me himself until after the thing was done.

Q. The question I put was, whether anything was said touching the property being required for any special purpose?

Mr. GANTT, (to Mr. KNOX.) By whom?

Mr. KNOX. By Mr. Hodgeman in behalf of Mr. Lucas?

(Mr. Gantt objected to the question.)

WITNESS. I do not know that there was anything said, Mr. Knox, about any special purpose.

Q. What was the date of the deed from you to Lucas?

A. Well, I am only speaking from memory; my recollection is, that it was in April, perhaps.

Q. How long was it before your semi-annual interest became due to the American Life Insurance Co., that the sale was made?

A. The interest would become due on the 1st of May, or along about the last of April or the 1st of May; the days of grace would throw it into, I think, about the 1st of May or the last of April.

Q. Was any part of the purchase money paid by Lucas to you, applied to the payment of that interest?

A. I do not know.

Mr. GANTT, (to Mr. KNOX.) Applied by whom?

Mr. KNOX. Himself.

98 (Mr. Gantt objected to the question.)

WITNESS. I would have paid the interest, whether I sold the house to Lucas or not.

Q. What money had you on deposit, except what you got from Mr. Lucas on the 1st of May, that you could have applied to the payment of the interest?

A. Well, I do not know, sir.

(Objected to.)

I cannot remember from memory what money I had.

Q. What amount of accommodation endorsed paper had you out at that time?

(Mr. Gantt objected to the question as incompetent and irrelevant.)

A. Well, I could not say exactly, Mr. Knox, without going over the list; I suppose it must have been—I cannot remember particularly—perhaps it was $40,000; I cannot tell.

Q. Was it more or less than it was at the time you suspended?

(All the questions from this point to where Mr. Gantt specifies, are objected to as incompetent and irrelevant.)

A. I cannot state, whether it was more or less; perhaps it was more than when I suspended; I do not recollect.

Q. When you suspended how much endorsed paper had you out?

A. When I suspended, I think I had—endorsed paper you speak of?

COUNSEL. Yes, sir.

A. I think I had about $50,000, perhaps; I am only speaking now from general recollection; I cannot give you the specific amount.

Q. Well, all that paper that you had out endorsed by persons in the spring of 1869, was it discounted direct by you, or how was the money raised?

A. I got the money generally discounted by these note-brokers.

99 Q. What rate of interest?

A. Sometimes it was 10 per cent. per annum, 1 per cent., 1½ per cent. a month. There might be a note of 10 per cent. per annum, and then, may be, I would have to give 1 per cent. a month, and then, perhaps, 1¼; I have given as high as 1½. I do not now recollect whether any, up to the time I suspended, was up to 1½, or not.

Q. Did not you pay higher than 1½ per cent. a month in the spring and winter of 1869?

A. I could not tell, Mr. Knox, without I was to look at the books and see what the rate was.

Q. How long had your paper been in the hands of street brokers at the time of your suspension?

A. Well, I do not know. I had to get money for six or seven years, when I had a heavy amount of security-debts to pay for Bark'dale—a very heavy amount—$40,000 or $50,000, perhaps. I had to raise, to lift up endorsements of paper for Bark'dale and some others.

Q. How long a time had your paper been continuously in the hands of brokers before you suspended?

A. Well, I could not say; sometimes I would have plenty of money and sometimes I would be run short of cash; it depended upon how the parties checked upon me for money; sometimes I would have plenty of money and I would have no notes out, then, at other times, I would have no money and must necessarily raise money to sustain my credit.

Q. If there ever had been a time, during the last four years, when Samuel Knox and Marshal Brotherton have not been on your paper to the amount of $40,000, when was it?

A. Well, I could not state without going over the list.

Q. If there ever has been a time, during the last five years,

100 when you were not in the hands of street brokers, or with this endorsed paper to the amount of $50,000, and upwards, state how much of the time?

A. Well, I could not say without I went over the list to see what amount of notes I had out.

Q. What amount of interest were you paying, on an average, annually, for three years before your suspension?

A. I think that I paid in 1866, $18,000 or $20,000 interest, and, in 1867, I think I paid about $37,000 or 38,000 interest, and 1868, may be I might have paid near the same amount, or including interest and commissions, might have paid, perhaps, nearly as much as $40,000.

Q. When did you go into the banking business the last time?

A. I went into the banking business on the 7th of July, 1862.

Q. When had you been in the banking business before?

A. I went in the banking business in 1854, and stopped in 1857, with Barksdale, Sept'r, 1857, owing about $360,000. I settled up all the debts, and 10 per cent. interest on it, myself; then dissolved with Barksdale, and then continued in the banking business with Mr. Poulterer one year, and quit, having paid everybody I owed.

Q. Were the losses great or small in the banking-house of Darby and Barksdale?

A. They were very large.

Q. Were there losses or gains in the banking-house that succeeded Darby and Barksdale?

WITNESS. Poulterer?

COUNSEL. Yes.

A. No; they did not lose any money, did not make any—squared off.

Q. What capital did you put in in 1862, in the banking busi-
101 ness you then commenced?

A. I did not put in any; I went into the banking business with Miltenberger, and he put in the money and charged me interest for my part of it; I think there was about $20,000; he charged me interest on my half of it.

Q. How long were you in with him?

A. I went in with Miltenberger on the 7th of July, and staid with him until about the 1st of September, 1863.

Q Was that business profitable or unprofitable?

A. Miltenberger and I made; I think that we made and divided; I know the first six months we divided $10,000 a piece; and the next six months, perhaps, we divided $10,000 more. We went in and bought and sold cotton, and made a good deal on that; that was in the same business.

Q. Did you make a loss in the banking business outside of the cotton speculations?

A. Lost always, outside of the cotton speculations. After Miltenberger went out I dealt in $200,000 or $300,000 worth of cotton with Duncan, Sherman & Co.; bought and shipped cotton; I made some money on that; bought and shipped and advanced money on tobacco; lost some money upon that, and then lost about as much as I made upon buying bills on Canada, where the parties broke up and took the benefit of the bankrupt law in the British provinces.

Q. What year was it you operated so largely in cotton?

A. In 1863 and 1864.

Q. Was it pretty generally known in town or not, that you were operating in cotton?

A. Yes, sir; no secret about it.

Q. Was it pretty generally known you were operating in to-
bacco?

102 A. I do not know about that; cotton we very often bought on the levee, under the hammer, at public auction; and tobacco, these merchants would get us to advance so much.

Q. During this time was your real estate in St. Louis encumbered or unencumbered.

A. Part of it was free of encumbrances and part of it was encumbered.

Q. What part was free of *of* encumbrance?

A. I think there was a house—the banking-house, where I lived, I think, was; where I did business alone, was free of encumbrance, I think; part of the time I know it was free of encumbramce, because, in 1863 and 1864, I borrowed two sums of money, so that was free; I borrowed one sum of Mr. Perry, at 6 per cent.—$10,000; and another sum of Funkhouse, at 6 per cent., on the corner; I know they were free when I borrowed the money. I did not borrow the money only to carry on my business there.

Q. To carry on your business?

A. I borrowed the money when I thought I could use it to better advantage.

Q. For speculative purposes?

A. No; to have money, I think, to operate upon.

Q. What business did you go into when you dissolved with Miltenberger?

A. I continued in the banking business.

Q. What capital did you put into the banking business that you continued then?

A. Well, we generally mentioned a specific sum; it was called capital, generally about $5,000 capital, and then did business on the deposits.

Q. How was it in relation to the object of going into the banking business, as to being able to use depositors' money for purposes
103 of business transactions—to make money out of it.

A. Well, sometimes I would have and have had between three—and when I was in there alone—between three and four hundred thousand dollars. When I was in with Barksdale I had a million and a half of dollars on deposit.

Q. What year did you have between $200,000 and $300,000 when you were alone?

A. I had had Horace Sanderson with me; he was a nominal partner, had no money; that was after Miltenberger went out; the books show we had sometimes as high as $200,000, or $300,000.

Q. How was it in relation to paying interest on deposits when you were alone?

A. We allowed all correspondents who kept accounts with us—foreign correspondents they are called, out of town—we allowed 4 per cent. Some of the accounts were very large: Botey, of Saint Jo—I think I have had as high as $160,000 of Botey; he sent me vouchers of the Government for $6,000 or $7,000.

Q. What interest was allowed on depositors' accounts in town?

A. Well, there was some that were allowed interest on deposits here in town.

Q. What other banking-house in town was allowing interest on deposits except yourself at that time?

A. I do not know; I believe they all were; Benwall was, I understood; he was allowed, I believe, 4 per cent.

Q. Did you issue certificates at any time to depositors, bearing a greater rate of interest; and if so, what time did you commence issuing those certificates?

A. From the very time they deposited the money; it depended on how long they would let it be; sometimes a man would issue
104 certificates bearing 4, 6, and 10 per cent., and as high as 7, 8, and 10 per cent.; it would depend on how long the bargain was, that they would let it stand.

Q. Suppose they let it stand 4 or six months?

A. Generally 4 and 6 per cent.

Q. Suppose they let it remain for a year?

A. Sometimes 10 per cent., sometimes give them only 8 per cent.

Q. In the year 1868, to what extent were your certificates of deposit out bearing 10 per cent.?

A. Well, I do not think that they were out to any great extent.

Q. $75,000?

A. Oh, no. I cannot tell, Mr. Knox.

Q. How was it with Mr. Polk's certificates?

A. Well, the way Mr. Polk's certificates came in was this: I was allowing Mr. Polk interest on his account, and we had to make a monthly return to the United States revenue officer of the depositors, and so much money on deposit, as cash. I suggested to Mr. Polk one day, that by giving the certificates, it would not be on the books as cash; because it would be in certificates of deposit and not in cash; and we issued these certificates for him for that purpose; and when the returns came to be made, there was so much cash and so much certificates.

Q. What time were they issued, and what interest were they bearing?

A. They were bearing 10 per cent. I do not know what time they were issued.

Q. How long before—on demand or time?

A. I forget; Mr. Vallé drew them; perhaps they were drawn payable on demand.

Q. Do you recollect what month of the year they were issued in?

105 A. No, I do not.

Q. Will you state what were the calls on your banking business in the fall of 1868 by depositors or creditors, whether urgent or otherwise?

A. Well, we had not been—in fact, I had not made any money there for three years before I quit. I then thought, from the large amounts of rent I had, I would be able to square up my accounts, and wind up after a little; I did not calculate to continue the matter, but acted with the view to try to get in a condition in which to stop, as soon as I could get the thing in a condition to stop.

Q. How urgent, or otherwise, were your depositors in the fall of 1868, for their money?

A. Well, I do not know that they were more so than usual; there would be occasionally hard times for money in New York, and money would become in great demand; a great number of men owed me, and never paid me at all.

Q. Was your house able to pay checks on it at sight against the deposits along in the fall—cash deposits in the fall of 1868?

A. We used always do it; sometimes they would come down upon us, and we would have to go out and sell exchange; we used up all our money on New York that we had there.

Q. In the fall and winter of 1868, was not there checks inside of $100 presented more than once before they were paid?

A. I do not recollect that there was; very often a check would come in and Mr. Vallé would come and tell me, "We must sell some exchange," and I would tell him to draw a bill and sell it. We sold our exchange, generally, to the banks, and got $4,000 and $5,000 at a time; sometimes $10,000; sometimes not so much—just as we wanted to use it.

Q. How much of your paper that fell due in 1868 and 1869 was

106 paid the Boatmen's Savings Institution?

A. Well, I could not tell without going over the list; there was a good large amount; every note, nearly, which I made, seemed to find a lodgment in the Boatmen's Savings Institution—the greater part of them.

Q. Did they take notes of you direct, or through street brokers?

A. Always through street brokers.

Q. How long before your failure was it they refused to discount your paper direct?

A. Well, I had had no direct discount with them, I think, for about 4 or 5 years, except one note; that note I got for $135,000 or $100,000, whatever there was there. I let them have the $150,000 county bonds.

Q. Why did not you have discount direct there at the Boatmen's?

A. I do not know; they would not discount my paper; I applied to them frequently.

Q. Who was your chief street note-broker, to dispose of your notes?

A. Henry Stagg and Henry Overstolz; sometimes, lately, a man named Dormitzen; sometimes they would come in and ask me themselves if I wanted any money.

Q. How long was this before your failure, you were in the hands of these gentlemen?

A. Well, I suppose it had been a year or two years.

Q. At what rate did the Boatmen's take your paper when they bought it of the note-brokers?

A. Most generally, I think, at 1 per cent.; sometimes more; and occasionally, I suppose, at 10 per cent.

Q. If they took a note for the last 2 years at 10 per cent., I
107 wish you would name it.

A. I could not do it unless I looked over the book, and looked at the particular note; I think there was one or two occasions when I got money at 10 per cent.; I will tell you one case: I discounted my note—two notes, I mean—of $5,000 each, with your endorsement and Mr. Emerson's, at 10 per cent.

Q. I am talking about the Boatmen's now, distinctly and unequivocally.

A. Well, if it is the Boatmen's, I do not know about that.

Q. Then I want it understood—I repeat the question that you may understand me. My inquiry is, what was the rate of discount that the Boatmen's exacted for all the paper they bought of yours of note-brokers for a year and a half before your suspension?

A. When the note-broker gave the note to me, where he would get the money, most generally wanted to conceal that fact from me, and I would not know where he would get the note; but I would get notice of the note being due, and have to go and pay it, and I would usually find it at the Boatmen's.

Q. What rate of interest did you pay for those notes you found at the Boatmen's?

A. I generally paid about 1 per cent.; sometimes, 1¼, and a commission to the note-broker.

Q. Are you able to state that one single note, for a year and a half before your suspension, that was paid at the Boatmen's, was discounted at a smaller sum than 1 per cent. for a month?

A. I cannot say the precise amount without looking on the list to see what was the discount paid on the book.

Q. Were your liabilities in April, the time you made the deed
108 to Lucas, greater or less than they were when you suspended?

A. My liabilities were greater, because I sold $24,000 worth of property after that.

Q. What was the date of your suspension?

A. 17th of June, 1869.

Q. About what was the amount of your liabilities to depositors at that time?

A. I could not state the precise amount, but the list will show, which is on file.

Q. Can you state within $10,000?

A. Well, I think, about—the amount of my bank account, you mean?

COUNSEL. Yes, sir.

A. I think it was about $170,000, or along there—$170,000 or $175,000.

Q. All due?

A. No, sir; some of it was not due.

Q. How much was not due?

A. I could not state, unless I went over to see what the loss was—what certificates were not due.

Q. Had any of the parties pressed you before for the payment of the money?

WITNESS. Who?

COUNSEL. Any of the depositors?

A. There was; I think Mr. Polk had been pressing me for payment.

Q. For how long a time?

A. Well, he had been pressing me for a month or two—one or two months.

Q. Had not he in the fall of 1868?

109 A. I do not recollect whether he had began as early as the fall of 1868. I paid him $10,000 in the fall of 1868, and then I paid him some, I think, afterwards. I think Mr. Boylen had been wanting me to pay him some money.

Q. How long a time before your suspension?

A. Well, I cannot state precisely the length of time.

Q. You cannot state whether several months or several days?

A. Well, it was perhaps a month or two—it might have been two months. Not so much for money as he wanted me to give security for a debt.

Q. At the time of your suspension how much did you owe for paper that was endorsed by you, and for debts that were due to you in a fiduciary capacity?

A. I could not state the amount without I was to go over and make an estimate of it.

Q. Can you tell within $20,000?

A. No. I could not state unless I went over and made a list of it.

Q. How much accommodation paper was there at the time you suspended?

A. I think there was, probably—at the time I suspended?

Q. Yes, sir.

A. I think that there was about $50,000.

Q. How much was there due to Amy Johnson?

A. There was about—I do not think that I owe her more than about $2,000 or $3,000.

Q. How much was due young Square?

A. About $14,000, I think. I am speaking only from memory. I could not tell you—about that—$14,000 or $15,000.

Q. You were curator of Square?

110 A. Yes, sir.

Q. At the time of your suspension what means had you of paying any of those liabilities?

A. Well, I had the property, which I surrendered to the trustees.

Q. What money had you on hand?

A. There was no money, I think. There was, I think, some. Whatever money there was Mr. Park drew from New York—$2,400 or $2,500. I do not recollect how much there was of it. Mr. Vallé kept an account there. I do not recollect, though.

Q. Was that really due, or was it credited to you by mistake there?

A. I asked Mr. Vallé, and he told me that we did not have that much money there, and he wrote to Mr. Park there was that much balance due. Says I, "How does that happen? There must be some drafts

lost or never presented for payment." Mr. Vallé said, "No." After I had suspended about 5 or 6 months then they wrote to me that there was a mistake—that somebody else—that they had received some money from Cleveland, which had been put to our credit, which ought to be credited to somebody else, and that there was the mistake.

Q. As a matter of fact, how was it in relation to your having any money in New York?

A. As a matter of fact we had about $700 or $800.

Q. What other cash had you on hand except that $800 in New York?

A. We did not have any here.

Q. How was it in relation to the bills receivable that were good and collectable?

A. Well, there was none of them that I could get the money out of.

Q. Any stocks that were available?

111 A. No. Not that I know of.

Q. How did your pecuniary condition at that time compare with your pecuniary condition, say the 1st of April, previous?

A. Well, I do not think there was much difference in it, only that I had sold and paid off Mrs. Perry and Mrs. Moffitt $20,000, and some other debts too. I owed them borrowed money.

Q. What improved real estate had you in St. Louis on the 24th of April that was not encumbered to the full extent, that you could get money on it?

A. I had no real estate but what was encumbered, that is, except the lot down near the Iron Mountain. We had no improvements on it.

Q. What was that worth?

A. I reckon about $2,000 or $3,000.

Q. Was it in litigation then?

A. The schools had some sort of claim on it then, which has been decided, I understand, against the schools. The question has been decided.

Q. What was the whole amount of encumbrance on your real estate in St. Louis, on the 1st of April, 1869?

A. Well, I would have to add it up. There was $150,000 on the house corner of 5th and Olive. There was $25,000 on a house on Main st., there where the hardware store is now—I cannot give the name of the man, Water, Simons & Co., I think—$25,000, and $25,000 on the corner house where the bank was, and $20,000 due to William H. Ferguson.

Q. On what property was that?

A. That was on the house where Water, Simons & Co. are. I think the second mortgage. And then there was $15,000 on the house

112 where Stanberry lives on Main st., to Alexander Duncan; been standing for 10 years and more. And then there was $8,000 I had given a note to the bank; made a note to Caswell F. Darby, my son, and got him to endorse it, and passed that off as collateral security to the Bank of the State of Missouri.

Mr. GANTT. Was that secured by a deed of trust?

A. I owed a note to the bank, and then I made a note to Caswell, and got him to endorse it, and passed that off as collateral security to secure my note to the bank. And then there was Moss Prewett had $8,000 on the house down there. And, then, on the first of April, I think I owed Mrs. Perry $10,000, and Mrs. Moffitt $10,000 on the two houses south of the corner building on Olive st.

Q. Did you sell the two houses on which was secured the Moffitt and Perry claim?

A. Yes, sir.

Q. How much did you sell the house for?

A. I think it was $24,000 or $25,000.

Q. How much of the proceeds of that sale did you receive after the satisfaction of the encumbrances on the property?

A. I do not think I received more than $2,000 or $3,000—perhaps not more than $2,000 or $2,500.

Q. Now, will you state whether or not all this property you have spoken of, that you owned in St. Louis, had not been encumbered by you to the full extent, that you were able to make a loan on it?

A. Oh, I suppose so, for it is very difficult to make a second mortgage on any property.

Q. How many of those pieces of property were shingled over with more than one deed of trust?

113 A. There was one piece I gave a mortgage of $20,000; I gave a second mortgage to William F. Ferguson; and then I gave Moss Prewett a deed of trust for $8,000, and put it on the same house, I think, by mistake; my intention was to put it on the other house, but it was put on the second house by mistake.

Q. What was the rate of interest on all those loans that were secured?

A. The rate of interest upon the Powers loan, I think, was 8 or 9 per cent. per annum, payable semi-annually—possibly more than that; the rate of interest upon the other loan, the man in Philadelphia, was 9 per cent., payable semi-annually; the loan to Ferguson was 8 per cent., payable semi-annually, and the loan to Moss Prewett was 8 per cent. per annum, payable semi-annually; and the loan to Mrs. Moffitt, I think, was 8 per cent. per annum; and the loan to Mrs. Perry—I was paying her then 10 per cent.

Q. Well, now at the time that Lucas gave this certificate on the Olive st. property, what was the extent of the encumbrances on the property at that time?

A. I think the extent of the encumbrances on the property at that time was $125,000.

Q. Was not it more than that?

A. No; I owed Alexander Duncan $30,000; and then I owed the Bank of Missouri $75,000.

Q. How about the note payable to Walter H. Darby?

A. Well, that is $25,000; and another $25,000 I had forgotten; there was so many of these transactions that I cannot tell without I see the papers. For example, I owed the Bank of Missouri, I think, $75,000; that is all I owed the Bank of the State of Missouri—$25,000 and

114 $50,000—that made $75,000; then the Stagg note to Walter H. Darby was $25,000, and $25,000 to Henderson and Hockaday, that made $50,000 more, which made $145,000; that is what it was.

Q. Then at the time the loan was made in Philadelphia of $150,000, spoken of, what encumbrances were on the property given to secure the Philadelphia loan?

A. Why, those were the encumbrances on it; there was $145,000; that was what it was.

Q. Well, what proportion of the $150,000 did you get after the payment of the $145,000 encumbrances on it?

A. I cannot tell that without going into an estimate; I do not suppose that there hardly any left; I cannot tell without going into the estimate, though; there was interest, and there was expences, and there was examinations of titles, and the commissions in making loans, so that I do not think there was hardly any left out of the $150,000.

Q. Did any of the officers of the Boatman's Saving Institution have any understanding that your property was encumbered?

A. I do not know what knowledge they had.

Q. How was it in relation to Hodgman—as to his position in the Boatmen's?

A. He was cashier in the Boatmen's.

Q. How was it as to his knowledge, in the winter of 1868 and 1869, of your encumbrances on the property?

A. I do not know what his knowledge was; I told him what I wanted to do; that I wanted to sell the property, to see if I could not pay off my debts; and I told him of the encumbrances, I think.

Q. What time was that?

A. That was in the spring of 1869.

Q. How long before Mr. Lucas bought?

115 A. It was along from the beginning of 1868 clear up to the fall, the winter and spring of 1869, until I stopped.

Q. What other piece of property beside that that Lucas bought, that you told him was encumbered, and that you wanted to sell?

A. I told him I wanted to sell it all.

Q. Did you state to him what encumbrances were on the Main st. property?

A. Yes, sir.

Q. How many months before your suspension, do you think, did he know that?

A. Oh, he knew it two or three months; he was trying to assist me, he said, in selling.

Q. What chance had you to be relieved from your liabilities, except from the mineral lands that you hoped to realize from?

A. Well, I had no chance except to sell my property, my mineral as well as my property in town: I wanted to sell it all to pay my debts; I wanted to sell for enough to pay my debts, and get clear of debts, but not to sell the equity of redemption.

Q. For two years before your suspension, what means had you of going on with your business unless you had received the accommodations and endorsements of your friends?

A. I had from $40,000 to $50,000 from incomes in rents; one year I think I received about $50,000; in 1857 I think I received $50,000 in rents; the next it fell off a little.

Q. What did the taxes amount to in those years?

A. I cannot tell; taxes amounted to considerable; I cannot state to you exactly.

Q. What means had you of paying this $40,000 or $50,000 en-

116 dorsed paper, except it was from your rents; what means had you if you had not been successful in getting accommodation endorsers to carry your $40,000 or $50,000 that was being carried at this time; what means had you of going on?

A. None, I think, except to sell the property; I thought that would pay my debts.

Q. How many years had you been trying to sell this property to pay your debts?

A. I cannot say; about one or two years; perhaps from 1867, I had been trying to sell it, as well as the mineral lands.

Q. About your rents on this property: how long before your suspension were you in the habit of anticipating your rents?

A. I had not done that until about 6 months before I suspended; about along in the winter, or the beginning of the winter; the beginning of the year 1867, the fall of 1868 and 1869.

Q. Then how long was that kept up?

A. I kept that up until I quit—suspended.

Q. Now, by discounting these rents, as you did, and with all the encumbrances that you had, were you able at all to diminish the paper that you had accommodation endorsers on for the last year?

A. Yes, I think I was.

Q. Was the accommodation paper that was out a year before your suspension greater or less than it was at the time of your suspension?

A. It was less the year before, I think; I had been paying some of them.

Q. And then the accommodation paper; was it increased or diminished individually during the last year before your suspension—in amount I mean?

117 A. It was increased towards the last. I had diminished it two years before that very considerably; had got it pretty much down.

Q. During the whole time that you were carrying on the banking business, corner of Olive and Main streets, was it a losing or gaining business?

A. It was a losing business.

Q. How much a year did you lose?

A. I must have lost from $25,000 to $30,000 each year.

Q. For how many years?

A. About three or four years; I speak, however, at random.

Q. Was your business that of a small bank, or were you doing a large banking business?

A. I did not want to do a large banking business; my object was to try to wind it up—to get it in a condition so that I could stop.

Q. How long had you been making that effort, sir?

A. I had been making that effort for two years.

(To all the foregoing questions from the point specified, Mr. Gantt enters an objection.)

Cross-examined by Mr. Gantt:

Q. Mr. Darby, were you ever protested before June, 1869?

A. After 1864, before June, 1869?

Q. And were all your obligations met as they matured?

(Mr. Knox objected to the question.)

Q. In the interval between 1864 and 1869, were you protested, and did your paper remain under protest, or were all your obligations taken up and met by you as they matured?

A. Well, they were always taken up; generally as they matured.

118 Q. There was no exception to that, I believe?

A. None of my paper, I think, was protested, unless it was through some carelessness. I do not recollect. I think there was one draft which had been drawn on New York for a small amount, and that had come back protested. I had several persons on whom I drew. I drew on the wrong man one day, but it was taken up directly after it came back.

Q. Your credit was kept up good here all that time?

A. Yes, sir; I think so. I do not know how my credit was out with other people, but I always was very prompt to pay my obligations—always.

Q. Were you in contemplation of bankruptcy at any time exceeding two months before you actually were compelled to take the benefit of the bankrupt law?

A. I never thought of going into bankruptcy at all.

Q. You always expected to settle up your debts and pay your creditors?

A. That was my object, and I called my creditors together here, and ask' them to let me settle up my debts; that I could do it, and that I had no expectation ot going into bankruptcy.

Q. Then you had no contemplation of going into bankruptcy when you stopped?

A. Not when I stopped; but when I called my creditors together, I asked them to let me do this. Mr. Polk made a speech and said it could not be done, and they passed a resolution that I should go into bankruptcy, and that is the reason I went.

Q. At the time you made this conveyance to Mr. Lucas, you had no expectation of going into bankruptcy?

119 A. No, sir.

Q. At what time, sir, have you any reason to believe that Mr. Lucas suspected that you were in a bankrupt condition?

A. I do not know what his opinions were about that.

Q. Do you know whether he had any reason to believe that you were in a bankrupt condition?

A. No; I do not know whether he did or not. I cannot say what his opinions were. I did not negotiate with Mr. Lucas for the house—had no intercourse with him at all. Mr. Hodgeman was the party with whom I negotiated.

Q. You had requested Mr. Hodgeman to find a purchaser for the house, had you not?

A. I talked with Mr. Hodgeman a good deal and confidentially. I told him that I wanted to sell my property and settle my debts and quit off everything; and I asked him to sell it for me if he could, and do all that he could to sell it for me, and he promised to do it.

Q. Did you pay him a commission at any time?

A. I did; I paid him $500 for that negotiation with Mr. Lucas, and told him I would pay him for assisting me further.

Q. Do you know whether he tried to sell it to other people?

A. I do not know who he did; he told me he was trying.

Q. Did you yourself try to sell to anybody else?

A. No; I talked with one or two, but I did not have any encouragement about buying it.

Q. Do you think, sir, that, at the time you closed that sale to Lucas, you could have got more for that property in cash from any other person in St. Louis?

(Objected to as incompetent and irrelevant.)

120 A. I do not know whether I could or not. After it was sold, though, then they came and said they would give me more for it.

Q. Who said so?

A. Well, Mr. Polk told me he would give me more.

Q. Yes; and would have paid for a part in the debt which you owed him?

A. He has told me since that he would give me the same amount of cash that Mr. Lucas did, and that he would have given me in his debt.

Q. Did he tell you that after it was over?

A. Yes; I never made any proposition to him before. Then there were others who came around and talked. Fellows would say, "Why, I would have found a man who would have given you so much more."

Q. They would have found a man?

A. That there were men who would have given so much more. One man would say, for instance, "Why didn't you let me know? I would have given you more than that for it.

Q. Who was that?
A. I think Dr. McLean.
Q. This was after it was all done?
A. Yes, sir.
Q. Had you made any attempt to sell it to any other person than Lucas before it was actually sold?
A. I had spoken to parties to see if they could sell it.
Q. How long before it was sold?
A. Oh, I suppose a month or two—some time.
Q. Up to the time it was sold Mr. Lucas' offer was the first offer you had, was not it?
121 A. No. I do not know; I had attempted to sell it myself to Mr. Cotting and he and I could not agree; he was here then; then he went on to New York; I wrote to him about it—Jamison, Cotting & Co.
Q. Why did you not sell it to Mr. Cotting?
A. Well, he and I could not agree on the terms; he did not want to give me what I asked.
Q. Was not Mr. Lucas the best bidder for the property upon the whole?
A. Mr. Hodgeman, acting with me about it, he told me I had better sell it at that.
Q. Why did he say you had better sell it at that?
(Mr. Knox objected as incompetent and irrelevant.)
A. He said he thought I had better sell it at that.
Q. That you could not get any more?
A. No, he thought that he would enable me to get out of debt and pay all up, square out, and relieve myself, and then go and sell out the balance.
Q. Mr. Lucas paid you $150,000 in cash, did not he?
A. He gave me a check on the Boatmen's for $150,000.
Q. For one month before your suspension here, had you reason to believe that there was any apprehension of suspicion on the part of the business community of St. Louis that you were about to suspend?
(Mr. Knox objected to the question as incompetent and irrelevant.)
A. No, I do not know that there were; I was making no money.
Q. You knew that; who else knew it?
A. I knew I was not making any, but I was trying very hard to get out of the business.
Q. You knew that?
A. Yes, sir.
Q. Who else knew it except your intimate friends?
122 A. Nobody knew it except my cashier, and I suppose my boys.
(Objected to as incompetent.)
Q. When you made that sale to Mr. Lucas did not you claim that he should assume the taxes for the year 1869?
A. No, I do not think I said anything about the taxes, Mr. Gantt.
Q. Did not you want, in that deed you made for the land, to stipulate that he was to pay the taxes for the year 1869, and did not he refuse to take the deed unless you made it a warranty deed?
A. No, I do not recollect; I drew the deed myself, and I met him in the street and told him I would draw the deed, and I drew the deed, and I had the deed ready for him when he came there, and he accepted the deed, I think, without a word; and after looking over it, says I, "There it is all in form and according to contract." In 1866, the deed was actually drawn; I did not have any talk with him, I told him I

could draw the deed. Says he, "I will be around when it is ready." Says I, "Very well," and I went on then and got it ready for him.

Q. You did not know what Hodgeman said on the subject of taxes?

A. I do not know what Hodgeman said to him.

Q. Did you have anything to say to Hodgeman on the subject of taxes?

A. I do not recollect that I mentioned the thing; my impression is there was nothing said on that point. I made a general warranty deed. The interest that was due on the 1st of May, was something like $6,000 on this property.

123 Q. Did Mr. Lucas express any anxiety as to whether the $6,000 would be paid?

A. Not at all. Mr. Lucas said, "You will pay that interest, certainly." I told him I would pay the interest; that I should pay it whether I traded with him or not; says I, "I will pay the interest," and the trade I think was made about the 23rd, sometime along in April. I told Mr. Lucas that I would collect the rents due on the last days of the month, as it was only a few days any how, and the interest was due to me; and after I had collected them I would turn the property over to him, and assign to him the policies of insurance.

Q. At the time you made that sale to Mr. Lucas, what did that property nett you over and above the taxes, insurance, and repairs?

A. Well, I cannot state that, Mr. Gantt, without going into an estimate and calculation about it; some rooms were vacant, some fellows owed me rent that I could not get the money out of them.

Q. Exactly; well, did it yield over and above the taxes, insurance, and repairs more than $16,000?

A. Well, I do not recollect how much was vacant, nor what it was.

Q. If you cannot answer the question you can say so.

A. I cannot answer the question specifically.

Q. What is your best recollection, sir?

A. My best recollection is that the house was all occupied.

Q. That is not the question?

A. Well, I cannot say how much was vacant, without I was to go back and examine.

Q. My question is, how much was actually received, nett, from the property over and above the taxes, insurance, and repairs?

A. The taxes and insurance were paid without any reference to the vacancy, and the repairs too.

124 Q. These notes that you say you paid at the Boatmen's, have you any means of knowing whether they were held by the Boatmen's or only kept by some person who kept his account there?

A. All I know is, I had to pay them there?

Q. So that would be equally the case whether the Boatmen's was the proprietor, or a depositor or customer was the proprietor?

A. Well, on one or two occasions I went around to see Mr. Hodgeman, when he would have a note, and ask him about letting me renew in part; I recollect one case, I had a heavy amount of taxes to pay, and I went around and asked him (one of my notes was coming due, and I wanted him to renew it) and he told me, he would lay it before the board; then he told me afterwards that the board declined, and they would not renew it.

Q. That gives me information respecting one note; I speak in general. How could you tell from the fact that a note is payable at a particular bank, whether it is held by that bank, or held by some person who is a customer of that bank?

A. Well, the only way, I suppose, that it is held at the bank, is that if Colonel Gantt held my note, he would put his name on the note on the back, and when I found no name on it, I inferred that it belonged to the Boatmen's, and so I paid them.

Q. Was that the case with all the notes payable at the Boatmen's?

A. Nearly all of them that was; I could tell you positively if I could go through the notes?

Q. You say, you know nothing about the rate at which these notes were taken, except the report made to you by your street brokers?

125 A. Of course, I could only depend on his honesty to report the correct matter to me; he would come in with a statement, so many days interest, so and so, and so and so; and generally I would never let it go until I knew what rate of interest I had to pay. Sometimes I would decline their offer. Then there was so much interest, then so many days, so much commission; then he would give me—generally brought the money—did not give a check, for he generally brought the money in a bulky bundle tied up.

Q. The banking business has fluctuated very much in St. Louis; has not it been very profitable in some and very unprofitable in other years?

A. Well, I do not know, Mr. Gantt; of late years there has been so many banking institutions and so many insurance companies.

Q. I do not speak of the last few years, I speak of the last 6 or 7 years, or of the last 30 years?

A. The last 30 years was very profitable; part of the time, very profitable, especially when Page, and Bacon, and Benoist, and the Bank of the State of Missouri, were about the only banks here. Now there are some 50 or 60 of them, and all the monied men and business men in the city are more or less connected with those different monied institutions, and keep accounts there.

Q. You are not answering my question; I asked whether the business of banking had not fluctuated very much in the last 30 years, sometimes having been very profitable, and at others very unprofitable?

A. Yes, sir.

Q. What was the price of gold in the fall of 1868?

A. It varied considerably.

Q. In the month of September, 1868, as compared with the greenback?

126 A. I cannot tell without reference to the tablets.

Q. Was it not about 150?

A. Oh, no; I do not think it was that high.

Q. Was it not as high as 140?

A. Well, it varied every day; we got dispatches every hour; it would vary some days one per cent., two per cent., and go up and down.

Q. Wasn't it at least as high as 140 in the month of September?

A. I cannot say so; I do not think it was.

Q. Do not you know the Secretary of the Treasury of the United States, in December, 1868, stated that it had been on an average of 146 since the 1st of July?

(Mr. Knox objected to the question as incompetent.)

A. I do not recollect about that.

Q. Then you cannot tell us what was the premium on gold in fact?

A. I could not without referring to the tablets; we had them regularly there every day.

Q. At one time when gold was very high here—when it was about 200, did not Captain Brown say he would give $300,000 for that property?

A. No. I do not know; there was a gentleman came to me, I think, and said that he was one of those real-estate agents—that was in 1864 or 1865—1864, may be; he said he was authorized to offer me $25,000 cash for that property; that was when gold was about—I do not recollect exactly; I do not know what the price of gold was then.

Q. That was about the middle of 1864, was not it?

127 A. No, I think it was in the fall of 1864; I told him no, I did not know; I thought I would not take that. Said I, "I would not take less than $300,000," and then he went off, and said he was not authorized to give me that. Then I think some one met me afterwards and asked me if I was willing to take $300,000 for it, and that is all that it ever amounted to.

Q. Did you say that you would take $300,000 for it?

A. Somebody came into the office to make that inquiry.

Q. Did anybody, at any time, offer you $300,000 for that property?

A. Only that; that is the only time I speak of.

Q. That was in the fall of 1864 and 1865?

A. I do not know which; I think it was is 1864 or '5. I do not know the year.

A. Are you able to say what year the premium on gold was the highest?

A. I think it was in 1864; I am only speaking from recollection, without referring to anything.

Q. Are you able to state when it was that gold first became worth 200?

A. No, I cannot without reference to the tables.

Q. The price of gold has something to do with the speculative value of property, has it not?

A. Well, I do not know; I cannot say as to that.

Q. Does not the prospect of a return to specie payment have a depressing influence on the price of property?

A. Well, I cannot say as to that; I do not think there is much prospect of getting to specie payment yet.

Q. We are nearer to it a good deal than we were five years ago, are we not?

A. Well, I do not know that we are.

128 Q. Is not the credit of the Government a good deal better now than it was 5 years ago?

A. No, I think the credit of the Government has always been good; I do not think the credit of the Government has been shaken with other powers at all.

Q. You do not think the credit of the Government was shaken in 1864?

A. No, sir; in fact the Government was always considered good, taking the people here, and the people abroad for it.

Q. Then, what is the meaning in your estimation, of the promise of the Government to pay, money being worth only 40c. on the $1, as a gold basis in 1864, and being upwards of 90c. on the $1 now?

(Mr. Knox object to the question as incompetent and irrelevant.)

A. Well, I do not know; I suppose a parcel of speculators got up a ring about gold, like that about anything else, in New York for the time being.

Q. You do not think the credit of the Government had anything to do with it?

A. No, I do not think the credit of the Government was affected; I think the Government credit was good.

Q. The bonds of the Government will sell now, will they not, for a great deal more than they would in 1864; is not that so?

A. Yes, sir; I suppose it is.

Q. Very well, does not that show the credit of the Government is better now than it was before?

(Mr. Knox objected.)

A. No, I do not think it does. That is a matter for you to argue about though. I believe the Government could have got double the amount of credit that she asked for all the time.

129 Q. Under able financiering that might have been the case. The question is now as to the fact, prior to this sale to Lucas, were you aware of anything said by him or done by him which signified that he was suspicious of your financial condition?

A. No; I do not know that I was.

Q. You do not know that he was?

A. I do not know that I had any reason to believe that he was suspicious of my financial condition. I do not know. He had always been very friendly with me, and personal relations were always good.

Re-examined by Mr. Knox, counsel for the plaintiff:

Q. In April, 1869, had there been an execution in the hands of the sheriff for $25,000 then, would the real estate that you owned then, after the sale to Lucas—the other real estate—have sold for enough, in your opinion, to have paid $25,000?

A. Yes, sir.

Q. What property do you allude to?

A. I could have sold it myself at private sale, and paid the execution.

Q. What property could you have sold; at what dates?

A. After the sale of the 5th street property to Lucas I could have sold, I suppose, that property on Main st.—two houses and lots there—I could have sold them, I think, for upwards of $100,000 or $110,000.

Q. How much was the encumbrance on it?

A. I think the encumbrance was about $81,000 or $82,000.

Q. Had not you been trying to sell that property for a year before?

A. Yes.

Q. What is the highest offer you had, over and above the encumbrances, throughout the whole of the negotiations you had for the sale of it?

A. Well, I do not recollect. There w*as* so many persons I was
130 talking with about it. I think I was offered by one party $125,000 for that property I sold to the Mississippi man.

Q. What did you sell it to the Mississippi man for?

A. I sold that for $25,000. The other property there would have brought $100,000.

Q. Now, how much encumbrance was there on the property there at that time?

A. I do not recollect. There might be about $80,000, or something.

Q. Have you ever been able to get $20,000 over and above the encumbrances on that Main st. property that you had an interest in, the equity of redemption in, at the time of your suspension?

A. I have not tried to negotiate with parties to buy my——

Q. That is not the question. You have been trying for a year to sell that property.

A. Yes, now; since the suspension, you asked.

Q. No; I said up to the time of your suspension. Could you have sold the property up to the date of your suspension, at any time—the property that you had an interest in at the time of your suspension—for $20,000, over and above the encumbrances on it?

A. I think I could have sold it for that.

Q. Did you ever have any intimations in your negotiations that led you to suppose you could get $20,000 over and above the encumbrances on that property?

A. No. There was a great number of persons thought I was hard pressed for money and that they could get the property at a great sacrifice.

Q. For how long a time was that idea operating upon people?

131 A. I do not know. I think that was about a year. There was a party came to me once and said that he would give me so much money for the property.

Q. Well, was the offer of Brown after the war, or while the war was pending?

A. I do not know who made the offer inferred. It was Brown made it, for I met him afterwards sometime and he made a direct proposition himself.

Q. Was that after the war?

A. That was after the war.

Q. Was this enquiry that was made, if you would take $300,000 for the property, made after the war or before the war?

A. During the war. I think during the war.

Q. Before the war Brown proposed?

A. Brown came after that, and made a proposition himself to me in person. Brown never came to me with this. It was one of those real-estate agents.

Q. Speaking of the value of the property known as Darby's building, what was the highest rental you were offered for the corner store, the lower floor on the corner of Olive and 5th streets?

A. $10,000.

Q. Was that for a term of years?

A. For a term of years.

Q. What did that embrace?

A. That embraced the corner store. $10,000 for the first store, or the corner store and the basement. Then that did not include the Atlas Insurance Co. above and the rooms clear up to the top. It did not include those.

Q. Now, what do you mean when you say you did not act in

132 contemplation of bankruptcy? What do you mean by "contemplation of bankruptcy?"

A. I did not contemplate going into bankruptcy. I thought that I could settle up my affairs, if they would let me transfer my property to Judge Brotherton, and let me work on to pay my debts, like I did when Barksdale failed before. I did not think of going into bankruptcy.

Q. Had not you reason to think months before that you would be compelled to go into bankruptcy?

A. No; I did not think I would ever go into bankruptcy.

Q. Did not you tell persons that they must not put you into bankruptcy; that it would be worst for them?

A. I do not recollect. I knew so little of the bankrupt law, I wanted to know something about it. Whether I could protect my indorsers; that was the only point; and in case a party should force me into bankruptcy, that I should have means to protect those who would be innocently compelled to pay money.

Q. How long was that before your suspension?

A. I think, perhaps, not more than a year. May be not a year.

Q. Well, sir, this was to protect your endorsers?

A. Yes, sir; to see whether I could do that in case some parties should

force me. Not that I contemplated going in myself; but I did not know but some fellow might file a petition to force me in.

Q. That was within a year?

A. I think within a year. Perhaps not a year.

Q. How was it in relation to your efforts during the whole of that year to take up your endorsed paper and relieve your endorsers?

133 (Objected to by Mr. Gantt.)

A. Well, I kept trying, and had got my endorsers—I had got pretty clear when I borrowed that $75,000 of the Bank of Missouri. I lifted up all my endorsed paper pretty much. I did not have hardly, I think, any of it out then; and then I thought that by the revenues coming in from my lead mines up yonder, I would be enabled to get along and work out entirely so as to save my estate. With the income on my lead mines, and the rents, that all this would enable me to pay the interest, and enable me to begin to sink the debt I was carrying.

Q. How was the revenue from your lead mines any one year, profitable or not?

A. I think there was about $30,000 made there, but I did not get a single cent out of it; the young man ran away with $5,000 that I sent up to pay the hands, and that was a loosing thing to me, but it was a source of profit if properly managed. Dick went up and made $5,000.

Q. How was it in relation to the expenditures for the last three years of your business as to the receipts and expenditures in your mines, was not the money spent greater than the receipts?

A. Oh, no.

Q. Take the year 1868, did you advance more money, or get more money—the year ending June, 1869?

A. From July, 1866, to the latter part of 1868 there was received from the lead mines, including $3,000, which I had advanced, about $33,000.

Q. What did you pay?

A. I did not pay anything from that.

Q. Do you mean to say your profits were $33,000?

134 A. No; the $33,000 was consumed by old man Bull, through the manager up there, that I did not get a return for; I did not pay out any money, only there was that much money expended.

Q. When you struck your balance on your books of your mining operations, did you find yourself in funds or out of funds?

A. Well, for the last three years the accounts just about balanced, and there are, I think, about forty-two or forty-three thousand dollars. There was about $5,000 of that that the agent took away with him. I would have been $5,000 the gainer if he had not appropriated the money.

Re-cross examination by Mr. Gantt:

Q. I understood you to say the profits would have been large if there had been honesty on the part of your agent?

A. Yes, sir.

Q. All this time the mines were being developed?

A. All the time the mines were being developed, and I sold that amount of lead; all the money that was sent back there, was realized from the sale of lead.

Q. Didn't all this furnish proof that the mines were a valuable capital?

A. Yes, sir; very valuable, if there had been anybody to manage them.

Q. You said you were offered $10,000 for the corner store; when was that?

A. There was some man came here in 1867, a man by the name of Lyon, and somebody, and I made an agreement with them, in writing, to let them have the store for $10,000, but that never was consummated. The fellows ran away after I had been to the trouble of putting
135 Mead out.

Q. And so the offer of $10,000 was something that came to nothing?

A. Well, the men broke up and went off; quit here and went to Memphis, I understood, and got broke up. I do not know that they were broke up here, *but they went broke up here;* but they went off.

Q. That offer came to nothing.

A. It amounted to nothing. I had been offered $7,000, also, by another party.

Q. But you are not able to tell us how much the property had been netting you at the time you made a sale of it to Lucas?

A. I could not do that without I could have time to see how much was vacant, and how much was yielding rent, and that I am unable to do without my memorandum.

Re-examined by Mr. Knox:

Q. How was it in relation to Mead's lease being out at the time these men were ready to give $10,000; why could not these men take possession under that lease that they offered to sign for $10,000?

A. I made Mead's lease to them, and told them that Mead's lease expired at a certain time; and Mead came to me afterwards, and offered me $7,000.

Q. I want to know, after Mead left, at the time his lease expired, if they were not ready to take possession, and that the reason that you did not take possession, was because you could not get Mead out?

A. I forced Mead out by unlawful detainer.

Q. Now, the question is this, and I want an answer to it: When the terms of the lease to Mead expired, were not the men that had the agreement with you ready to take possession under that lease for $10,000?

136 No; I made an agreement as soon as I got possession of the house, that they were to give me $10,000.

Q. Was Mr. Mead's lease out or not?

A. Mead's lease was out, but it took a month to get him out.

Q. If Mead had gone out the very day his lease expired, where were these men that agreed to take the property for $10,000?

A. If I could have given them possession of the house, they would have executed the lease.

Q. At the time when Mead's lease expired, if you had got possession that day, were these parties ready to take the lease at $10,000 a year?

A. They said so to me.

Q. Were they here at the time?

A. They were here, and had only a temporary place fitted up.

Re-cross examination by Mr. Gantt:

Q. Were not they bound by the contract that was made to take the property at that rate, when you got possession of it from Mead?

A. I had only a memorandum from them signed to that effect, but no lease was made. They went off before I got possession of the house.

Q. Was that contrary to their agreement, or in conformity with it?

A. No.

Q. Which was it?
A. Contrary to their agreement.

JOHN F. DARBY.

And Exhibit A, referred to in the foregoing deposition of John F. Darby, is in the words and figures following, to wit:

137 *Exhibit "A," referred to in deposition of John F. Darby.*

"ST. LOUIS, MISSOURI, 14*th September*, 1868.

"Messrs. A. R. & C. M. NEWCOMB, *St. Louis, Mo.*,
"*Acting in concert with W. W. Ivory.*

"GENTLEMEN: In compliance with your request I make this formal application to you to borrow one hundred and fifty thousand dollars from the American Life Insurance Company of Philadelphia, for five years, at eight per cent. interest per annum, payable semi-annually. The same to be secured by a deed of trust on the lot of ground at the southwest corner of Fifth and Olive streets, on which are now situated three elegant costly marble stores, five stories high, the property being valued, as per certificate of James H. Lucas and Col. J. H. Britton, president of the National Bank of the State of Missouri, at three hundred thousand dollars, the ground also, without the improvements, is worth the money; and as further security to assign policies of insurance on the buildings to the extent of one hundred thousand dollars. I would prefer making the loan on each separate store or building of fifty thousand dollars each, at the same rate of interest, say fifty thousand for three years, fifty thousand for five years, and fifty thousand for seven years, interest payable semi-annually at eight per cent. per annum.

"Respectfully, &c.,

"JOHN F. DARBY."

(The above is copied from the letter-book of John F. Darby, page 401, September 14, 1868.)

(Copy.)

"ST. LOUIS, MISSOURI, 14 *September*, 1870.

"Messrs. A. R. & C. M. NEWCOMB,
"*Acting in concert with W. W. Ivory.*

138 "GENTLEMEN: In compliance with your request, I here state to you the terms on which I wish you to negotiate for the loan of one hundred and fifty thousand dollars, at eight per cent. per annum, as set forth in my letter of even date herewith. I will, of course, pay the expences of examining the title and the drawing of the deeds of trust, and the stamps to be used on the same. And in case you effect the loan, will pay you in full compensation of your commissions for that service, the sum of twenty-three hundred dollars, ($2,300,) as agreed upon in full of the same, and no further charges whatever. In the event you do not effect the loan, I will, of course, pay nothing, and be subject to no expense, as nothing will have been effected.

"Very respectfully, &c.,

"JOHN F. DARBY."

Exhibit A, L. L. W. Copy of letter from same letter-book, page 401.

And Exhibit B, also referred to in said deposition of John F. Darby, is in the words and figures following, to wit:

Exhibit "B," referred to in deposition of John F. Darby.

As well as I can recollect, the certificate referred to as having been signed by James H. Lucas and J. H. Britton, reads about as follows:

"Having been called upon by John F. Darby to estimate and state the value of his property in the city of St. Louis, on the southwest corner of Olive and Fifth streets, the lot fronting seventy-five feet in front on the west side of Fifth street, by one hundred and twenty-seven and a half feet westwardly in depth, to an alley fifteen feet wide, on which are situated three marble stores, five stories high, fronting on Fifth street, bounded on the east by Fifth street, on the north by Olive street, state that we are well acquainted with the said property, and that we consider the said property and improvements well worth the sum of three hundred thousand dollars, and that we value the same accordingly at that sum.

"St. Louis, September, 1868.

(Signed) "JAMES H. LUCAS.
"J. H. BRITTON."

Ex. B.

139 *Deposition of H. W. Leffingwell.*

Deposition of H. W. Leffingwell, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants:

H. W. LEFFINGWELL, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. What is your business?

A. That of a real-estate agent, I believe.

Q. Where and how long have you been such?

A. My office is 320 Ches'nut st.; I have been in the business more than 25 years.

Q. At what city?

A. Here in St. Louis.

Q. Do you know the lot on which is situated the building called Darby's building, on the northwest corner of 5th and Olive?

A. Yes, sir.

Q. Well, sir, what lot, if any, in the city of St. Louis, is more valuable, of the same number of feet, without any improvements, than that lot?

A. None.

Q. If that lot and the building on it were worth $300,000, in September, 1868, what was the same property worth the latter part of April, 1869?

(Mr. Gantt objected to the question.)

WITNESS. What is the reason for fixing that limit?

COUNSEL. We say that limit was fixed by a party at that time, and we contend and assume that to be the value.

WITNESS. Well, there was nothing that could enhance the
140 value, except it be the improvements on the northeast and southeast corner of Olive st., if commenced within that period, they would have enhanced the value of the property.

Q. To what extent?

A. Well, 20 per cent.

Q. Were there any improvements on 4th st. having any effect on the value of the property, which have been recently erected?

A. I suppose the building of Mrs. Hunt's and Lucas' property on the northwest corner of Locust and 4th st. would have enhanced the value of it some.

Q. If the buildings on 4th st., to which you have referred, had commenced in September, 1868, and before the close of April, 1869, and the buildings on 5th st., to which you have referred, were commenced between those two periods, what would you say would be the difference in value of the property referred to, if it were worth $300,000, in September, 1868, what would it be worth in April, 1869, in opposition to 1868, after the improvements commenced?

(Mr. Gantt objected to the question as incompetent and irrelevant.)

A. Well, it would add to the value, but I cannot say how much; it is a square away from it.

Q. I speak now of the 5th and 4th st. both—the improvements on 5th and on 4th st.?

A. Well, 20 per cent. would be, I think, a fair estimate to put upon it.

Q. Can you give an opinion as to the value of the land without the buildings, the 75 feet by 127½, in the fall of 1868?

A. Well, the naked ground would have brought $2,500 a foot.

141 Q. Well, sir, if those improvements, of which you have spoken, were commenced, fairly going, what would have been the change in value of the ground; how much would have been worth, then—the naked ground, without the buildings?

A. It would have brought $3,000, I think.

Q. Will you state whether Mr. Lucas is a man of large or small wealth?

A. He is a man of large wealth—reputed large wealth.

Q. How long a time has he been so regarded?

A. He is richer now than he was 20 years ago, and he was a wealthy man, then.

Cross-examined by Mr. Gantt:

Q. Do you know of any property in this city, that sold at $3,000 a foot at any time, unimproved?

A. Yes, sir,

Q. Where?

A. The corner of Olive and 4th.

Q. Which corner?

A. The southeast.

Q. When was that sold?

A. Sold to the old Bank of Missouri, the National Bank of the State of Missouri.

Q. How many feet?

A. I think it is 60 feet on 4th st.

Q. How much did it sell for?

A. I believe it sold for—I cannot tell you the exact amount now; I have forgotten.

Q. But it was more than $3,000 a foot for property fronting on 4th st., and the usual depth?

142 A. It was more than $3,000 a foot for the usual depth.

Q. What is the usual depth?

A. 127½ feet.

Q. And this was only 40 feet?
A. I think it is just about 40.
Q. So you made an allowance for its being only 40 feet deep, and therefore of opinion that if it had been 127½ feet deep, the property ought to have brought, according to the sum actually made, more than $3,000 a foot?
A. Yes, sir; I think about $150,000. I believe it did; I believe it brought $150,000.
Q. Were you present at the sale?
A. No, sir.
Q. Are you speaking from anything but information?
A. That is all I could have, sir; I did not sell it nor own it.
Q. Do you know, was property saleable in the spring of 1869—a year ago?
A. Yes, sir; much more saleable than it is now.
Q. Was not it much less saleable in 1869 than in 1868?
A. We sold more property in 1869, but there was more property sold in 1868 than in 1869.
Q. Were there not better prices given in 1868 than in 1869?
A. I do not think there was much difference.
Q. Whatever difference there was, was not it in favor of 1868 rather than 1869?
A. Well, I do not recollect of any particular instance.
Q. Was not last spring, the spring of 1869, a decidedly dull season; it is duller now, but had not the dull season for real estate commenced then?
143 A. Well, we sold more last year than we have for several years.
Q. But had you not to submit to declining prices?
A. Well, there was several new additions; Thomas Allen's, for instance. We did not sell the property last year that we expected to sell; the best property we had to sell we failed to sell; did not get the prices asked for it.
Q. Was not that principally the case with property in the heart of the city?
A. Yes, sir; that is where the trouble was.
Q. Then, in the heart of the city, in the spring of 1869, was not there a great difficulty in realizing prices which property had been previously held at?
(Mr. Knox objected to the question as incompetent.)
WITNESS. State it again.
(Last question repeated.)
A. Well, perhaps that is so; I think it is; there was a reason for it, particularly prior to 1868.
Q. What is that reason?
A. I think the difference between gold and paper.
Q. Exactly; well, the decline of gold has had a continually depressing effect on the real-estate market, has not it?
A. Well, it has got down to the rock now.
Q. But has not the decline of gold had a depressing influence on real estate?
A. Well, I would rather answer it on the sale of real estate, the prices I have not decided on.
Q. Well, upon the sales, it has had a continually depressing effect on the prices obtained for real estate?
A. Yes, sir.

144 Q. Do you remember what was the price of gold in the fall of 1868?

A. No, sir, I do not.

Q. Do not you remember that, in the fall of 1868, the price of gold ranged from 40 to 50 per cent. premium?

A. In that neighborhood.

Q. Do you consider that the ground on which Darby's building is situated, is as valuable as ground on the corner of Olive and 4th st.?

A. Yes, sir.

Q. Have you any idea of what Mr. Darby's buildings pay?

A. No, sir; I have no idea.

Q. What is your reason for thinking that that property on which Darby's building is situated, would have sold for $3,000 a foot in the spring of 1869?

A. I have very good reason for thinking so; if I could have gotten any such piece of ground as that for $3,000 a foot, I had a purchaser for it.

Q. Who was that purchaser?

A. This concern at the corner of Pine and Main st's; northeast corner of Pine and Main.

Q. Who is that?

A. Jamison & Co.

Q. Jamison, Cotting & Co?

A. Yes, sir.

Q. He wanted the corner, did he?

A. Yes, sir, he wanted the corner of Olive and 4th.

Q. And that purchaser was Jamison, Cotting & Co.?

A. Yes, sir.

145 Q. How much ground did they want?

A. About what Mrs. Patterson had, I think 90 feet.

Q. They would have bought Mrs. Patterson's land on 4th st.?

A. Yes, sir.

Q. 90 feet?

A. 90 feet, I think it was.

Q. Did they not want the naked lot, which they wished to improve according to their own desires?

A. Certainly, and that comes the nearest to being naked to any corner about there.

Q. Are you acquainted with the character of the building on Darby's lot?

A. Yes, sir.

Q. Do you consider that building to be judicious in relation to the locality and the value of the ground?

(Mr. Knox objected to the question as incompetent.)

A. Well, at the time they were put up they were considered so.

Q. No, but now?

A. No.

Q. So that the property, as it now stands improved, would not, in your judgment, be worth as much as the naked value of the ground, and the buildings too—the full value of the building?

(Mr. Knox objected to the question.)

A. No, sir; I think it is improved to less advantage now.

Q. Did you know that Darby's property was for sale?

A. No, sir.

Q. Do you know Mr. Darby?

A. I think so.

Q. Do not you know you do?
146 A. John F. Darby?
COUNSEL. Yes, sir.
A. I think I know him.
Q. Do not you know very well you know him?
A. That is according to what you mean by knowing him.
Q. Do not you know him just as you know me?
A. Yes, sir; I know him.
Q. You know him just as you know Mr. Lucas?
A. Yes, sir; I did not know but you had some other meaning.
Q. Oh, no. Up to April, 1869, had you any suspicions that John F. Darby was otherwise than a man of wealth?
A. Yes, sir.
Q. You did?
A. I did.
Q. What caused you to suspect that he was otherwise than a man of wealth?
A. Well, it would take too long to answer.
Q. You became familiar, then, with his affairs?
A. I did, sir.
Q. And in that way you knew it?
A. Yes, sir.
Q. Do you know what was the general estimate, in the community, of Mr. Darby's circumstances at that time?
A. No, sir.
Q. Did you ever know of any other property except that at the corner of 4th and Olive, that you have spoken of, which sold for anything like the price that you have named?
A. Well, there is but little property about those corners for sale;
147 what has been sold about those corners has brought $3,000 a foot, or equivalent to it. I consider 5th and Olive the best corner in St. Louis.
Q. At what time in the last five years has the price of real estate been highest in St. Louis, from 1865, to the present time?
A. Well, sir, taking the same basis during the five years that we have now, it would bring as much now as ever.
Q. I do not mean the same basis—you mean the gold basis?
A. Taken the same, make money the same.
Q. Exactly, make money the same, but I mean the nominal value?
A. Well, first class property will bring as much now, pretty nearly, as ever it would; pretty near as much.
Q. When would it have brought more?
A. Well, I think likely in the latter part 1868 and 1869, it would have brought a little more.
Q. Was not it higher in 1866 and '7, than it has been since?
A. Well, people were afraid of the money then, and would pay more for it.
Q. That is the very reason, my dear sir, in 1864, it was still more the case, was not it?
A. Yes, sir.
Q. Then the approach to specie payment has operated as a discouragement to investments in real estate?
A. Well, money has been coming down, and real estate has not been getting up much; property about holds it' own.
Q. Was not the nominal price then of property measured in dollars, greater in 1866 and 1867, than it has been since?

A. Not that kind of property; I think at that time 4th and 5th st., had not developed itself as much as since.

Re-examined by Mr. Knox:

148 Q. You state you are conversant with Mr. Darby's pecuniary condition; what was his pecuniary condition, for the last three or four years?

(Mr. Gantt objected to the question.)

A. I do not want to answer that question.

Q. Well, I will waive that question.

Q. How much were you authorized to have paid for the southwest corner of 4th and Olive, if you could have got it?

A. Cutting would have given $3,000 a foot, if he could have got it.

Mr. GANTT. 4th and Olive?

A. Yes, sir.

WITNESS. I wish to make a correction. I think the word "familiar" used in connection with Mr. Darby's condition, is too large a word. I never examined Mr. Darby's books, and therefore I think the word "familiar" is too large a word.

H. W. LEFFINGWELL.

Deposition of Marcus A. Wolff.

Deposition of Marcus A. Wolff, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

MARCUS A. WOLFF, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. Where do you live?

A. Papin avenue, 4 miles from the city.

Q. What is your occupation?

A. Real-estate business.

Q. How long have you been in the business?

A. 10 years.

149 Q. Where?

A. In the city of St. Louis.

Q. Do you know the property at the southeast corner of Olive and 5th st., known as Darby's building?

A. I do, sir.

Q. Are you familiar with that property?

A. I am.

Q. Will you state if that property was worth, in September, 1868, $300,000, what would it, in your opinion, be worth in the latter part of April, 1869?

A. I think its value would have been increased between $50,000 and $60,000, by reason of the improvements started at that time in the vicinity.

Cross-examined by Mr. Gantt:

Q. You say you are familiar with that property, Mr. Wolff?

A. I am.

Q. Did you ever have the property in your hands for sale or rent?

A. I had charge of it to rent for Mr. Darby.

Q. From what time to what time?

A. I think for about a year before the first of April, 1870. I probably had it a year.

Q. A year before the first of April, 1870?

A. Let me think. I think I got it in December, 1868.

Q. In December, 1868; and how long did you have it in hand?

A. I had charge of it until it was sold to Mr. Lucas.

Q. Do you know what the property rented for in the year ending April, 1869—the whole year; I ask now how much was received as rent for it, if you know?

WITNESS. For the entire year from April, 1868, to 1869?

COUNSEL. Yes, sir.

A. I do not know, sir.

150 Q. Was any part of it vacant at the time you had charge of it?

A. The corner store became empty while I had charge of it.

Q. It was empty?

A. Became empty just, I think, before Lucas purchased it. White, Henry & Co. moved out a short time before or after Lucas bought it.

Q. You stated you thought it was increased in value between September, 1868, and April, 1869; don't you know as a fact that the price of real estate has been lower, has been going down for the last two years, in St. Louis, and that it is now a great deal lower than it was two year ago, for example?

A. Well, I think that property would sell as well now as it would two years ago. I do not find any business property can be purchased at less figures than two years ago.

Q. Well, could it be sold for so much?

A. Not so readily.

Q. Has not the price of property been going down ever since people came to realize that they were approaching specie payment?

A. Well, I do not think that question of real estate in our city to a great extent. There has been a general stagnation in the real-estate market.

Q. That is very marked this spring?

A. Yes, sir.

Q. And it was more marked in 1869 than 1868?

A. Yes, sir.

Q. And the market was not as buoyant in 1868 as it was in 1867, was it?

A. Well, in 1868 we did a large real-estate business. There was a large amount of property transferred in that year. In 1867 it was duller, and in 1870 duller than it was in 1869.

151 Q. A great deal?

A. Yes, sir.

Q. Do you know of any property in St. Louis which is as valuable as the corner of 4th and Olive?

A. I do not think there is any better property in the city of St. Louis.

Q. Do you think there is any as good?

A. Well, Colonel, I think that 5th and Olive is rapidly approaching the value of 4th and Olive.

Q. Exactly; it is approaching, but has not reached it yet?

A. I think not. I think 4th-st. property has very nearly culminated, and the value of 5th is enhancing.

Q. What is the highest sum you ever knew property to sell for in St. Louis per foot?

A. Well, I think the highest sum I ever heard of was the Centenary-Church property.

Q. How much was that a foot?

A. Between $2,400 and $2,500, if I remember rightly.

Q. That included the building upon it, did not it?

A. That was not adapted for the location. It was a church building.

Q. When was that sale made?

A. I think that sale was effected last fall—John J. Roe, corner of 5th and Pine sts.

Q. Bought in 1869?

A. Yes, sir.

Q. Why, it was bought before October, 1868.

Mr. KNOX. I do not think so.

WITNESS. I know it was in the market some time, but my impression is it was sold from September to November, 1869.

152 Mr. GANTT, (resuming.) You speak of the property that was sold to John J. Roe?

A. Yes, sir.

Q. At the southwest corner of 5th and Pine?

A. Yes, sir.

Q. Was that a cash sale?

A. I really do not know. I never heard the terms of the sale.

Q. Do you know how much front it has?

A. I think it had about 87 feet on 5th, by 127 feet deep on Pine—very near that.

Q. Do you remember the gross sum for which it was sold?

A. I do not. I remember making the calculation at the time how much it brought per foot. I think, between $2,400 and $2,500.

Q. It ought to have sold for upwards of $200,000 at that figure?

A. Yes, sir. I think that property corner of 4th, between Pine and Locust, is worth more than that, but I have not heard of any sales being made after that time.

Q. You say that the putting up of those improvements projected in the neighborhood of 5th and Olive added to its value; did they add to its rent?

A. Well, I have not had charge of the property since Lucas purchased. I am not competent to answer that question.

Q. But the building improvements were commenced?

A. They were commenced; and when improvements commence on property it does not increase the value of property, but rather depreciates it while the improvements are going on.

Q. Were the buildings going on at the time Lucas purchased?

A. Yes, sir; they were all well under way.

153 Q. During that time did those improvements on the adjoining lots improve or injure the value of property?

A. They injured its immediate value, but prospectively it enhanced the value.

Re-examined by Mr. Knox:

Q. In your opinion, what, as a permanent investment, is the most valuable lot of ground 75 feet by 127, in St. Louis, bare ground?

A. There is none more valuable than 4th or 5th and Olive, in my opinion.

Re-cross-examined by Mr. Gantt:

Q. Are any of the corners of 4th and Olive, or 5th and Olive vacant, bare ground?

A. None, sir.

Q. From your knowledge of the building of Mr. Darby, is it a judicious one for the purpose of revenue, or injudicious?

A. Well, I should construct it differently, although it is a good building.

Q. This is my question: Is it a judiciously or injudiciously constructed building for the purpose of revenue?

A. I think it is injudiciously constructed.

Mr. KNOX. If there would be any difficulty in changing it, state what difficulty there would be, so as to make it judicious in its arrangements?

A. Well, I think its construction could be changed with very little cost—two entrances on 4th st., making the upper story more productive.

Signature waived.

Deposition of Edward Wyman.

Deposition of Edward Wyman, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Mis-
154 souri, at the city of Saint Louis, in said county and State, on the part of complainants.

EDWARD WYMAN, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. What is your residence!

A. St. Louis.

Q. How long have you lived in St. Louis?

A. Since 1843.

Q. What is your present business?

A. I am in the real-estate business.

Q. What is the name of the firm?

A. E. G. Wyman & Co.

Q. State whether you know the property known as Darby's building, situated on the northeast corner of 5th and Olive?

A. I know it; yes, sir.

Q. What property in the city of St. Louis, in your opinion, is more valuable than that Darby property—the naked ground?

A. Well, I do not know that there is any.

Q. If that property, including the land and building, 75 feet by 127½, were worth $300,000 in September, 1868, what was it worth, in your own opinion, in April, 1869?

(Mr. Gantt objected to the question.)

WITNESS. Will you put it again?

(Question repeated.)

A. No more, except as its prospective value was greater in consequence of the improvements, that during that time were projected and commenced; as near as I can remember the *the* southeast corner,
155 and about the same time the northeast corner of 5th and 6th on Olive st., and in that circle of a radius of two or three squares, quite a large number of our very fine city improvements were projected, which would make the corner, I think, more valuable.

Q. What per cent., in your opinion, was added to the value after the commencement of those improvements?

A. After the commencement?

COUNSEL. Yes, sir.

A. Well, perhaps 15 per cent.; about 15 per cent.

Q. Then if the property was worth $300,000 in September, 1868, what would you say it was worth in April, 1869, provided the improvements above referred to had been then commenced?

A. From $330 to $340,000.

Cross-examined by Mr. Gantt:

Q. Is it your opinion that the property was worth $300,000, in the spring of 1869.

WITNESS. In the spring of 1869?

COUNSEL. Yes, sir; a year ago.

A. Well, that is a different question from what Mr. Knox asked—How many feet front?

COUNSEL. 75.

A. I do not know that I have ever heard any statement as to the cost of that building; I understood it to be a very fine costly building; yes sir, I should think it was worth $300,000.

Q. Have you any idea what the building rents for?

A. I have not, sir.

Q. Have you any idea of what the taxes are?

A. No, sir.

Q. Then the opinion you form of its being worth $300,000, is not drawn from any estimate of its productive value?

156 A. No, not of its actual productive value, that opinion is formed from a general knowledge of the value of the real estate in the city, not as to what that particular building yields; what revenue it yields I do not know.

Q. Suppose that building does not yield $13,000, over and above taxes, what would you say, then, would be its value?

A. Well, that is pretty hard to tell; I should say then, that the building was badly constructed. I should say that it was the fault of arrangement. I should say that the lot, and such a building, of the value of that building, ought to bring a great deal more.

Q. And how the building is actually constructed you are not aware?

A. No, I am not very well aware; I have an idea, however, that the building is not constructed after the best manner for yielding rent.

Q. Well, this building enters into this computation of value very largely, that you have just named, does it not?

A. Pretty largely, sir; but the ground is the principal thing.

Q. Could that building be put up for less than $130,000 to $150,000?

A. I think not; but I would not wish to speak as an expert in matters of the cost of the building—the value of the building.

Q. Has not the price of real estate in this city been going down for several years—was not it much higher in 1866 and 1867 than it is now, and is not it lower now than it was in 1868?

A. Some pieces of property have.

Q. In the heart of the city, is not that so?

A. Well, I think not in the heart of the city; I think good central business property has held its own well; property outside,

157 further removed from the center, north and south, and in localities that are not favored localities, it has declined, and residence property, as a general thing, has declined, but central improved business property I do not think has declined, Mr. Gantt; I do not think there has been any great advance between those two dates, outside of the improvements; I would not say that the advance had been much, if any; perhaps nothing.

Q. Is it your opinion that the price of central business property is as great now as it was in 1868?

A. I think it is.

Q. Has the approximation of the value of paper to gold had any influence on the price of real estate within the last four or five years?

A. I think it has.

Q. Has it had an elevating or depressing influence?

A. Depressing; I think but for that we would have seen an advance in central business property, and perhaps the fact that it has held its own, this depression not showing on that property, is really the margin; the improvements we would have otherwise had is really the margin between the two.

Q. What is the highest price that you know of that any property ever realized, per front foot, in the city of St. Louis?

A. I cannot tell you, sir.

Q. Did you ever know a sale to be made here for $2,000 a foot?

A. I think I have, sir.

Q. Where?

WITNESS. The ground alone?

COUNSEL. Yes, sir.

A. I cannot speak positively in regard to it.

Q. Of course I speak of the ground alone.

158 A. I estimate ground on 4th and 5th st. in that neighborhood as worth more than that.

Q. I am asking you about actual sales?

A. Not of ground alone without improvements; I do not remember any.

Q. Do you know of any sale of ground and improvements together which would leave $2,000 as the value of the improved ground, after deducting the value of the improvements?

A. I do not recollect figures; I cannot state.

Q. I think you stated you did not know for what the Darby building is renting?

A. I do not, sir.

Q. Are you able to say for how much improved property should rent—what per centage upon its value it should rent—in order to make it a safe thing for an investment?

WITNESS. Nett?

COUNSEL. Yes, sir.

A. 6 to 8 per cent.

Q. The rate of taxation, city, State, and county taxes, runs a little over 3 per cent, does not it?

A. Yes, sir.

Q. Besides which there are the expenses of insurance, repairs, and agencies, is it not so?

A. Yes, sir.

Q. As a matter of fact, sir, is it your opinion that property was as high in the spring of 1869 as it was in the spring of 1868; that the price of it was as great?

A. I think it was; that class of property.

159 Q. Suppose this property had been encumbered by a large sum of money, and therefore the purchaser could not get a clear title, but would get only an equity of redemption, would property of that kind be as saleable as unencumbered property?

(Mr. Knox objected to the question as incompetent.)

A. Well, it depends a good deal on the encumbrance—the nature of the encumbrance—the terms of the loan, if loans are made.

Q. State what you mean?

A. Well, if it was very heavily encumbered at a large of interest, and the encumbrance could not be lifted, it would impair the availability of the property in the market.

Q. Suppose it was encumbered to the extent of $150,000, at 8 per cent., covenants in the deed to keep up insurance on a certain figure; would such a condition of things impair its value?

A. Somewhat; not very much at that rate of interest; a ten per cent. loan would materially.

Re-examined by Mr. Knox:

Q. If a purchaser wanted to purchase ground of that kind, in your opinion, would an 8 per cent. loan, having three years to run, have any injurious effect on the price of the property?

(Mr. Gantt objected to the question.)

A. It would with some parties, with others I do not think it would; it would depend a little on the purchaser; you speak without reference to any particular purchase.

Q. I speak of the majority of purchases as far as your observation extends?

A. Well, the majority of purchasers of that class of property would object to the existence of those loans, even at 8 per cent.; people who invest in that class of property as a general thing have the cash and
160 want cash; and even were the loans at a very moderate rate of interest, 5 to 8 per cent., (which would be moderate as money is in this market,) would prefer to take up the loan if they could.

Signature waived.

Deposition of Green Erskine.

Deposition of Green Erskine, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainant.

GREEN ERSKINE, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. What is your name?

A. Green Erskine.

Q. Where do you reside?

A. 3025 Locust st. St. Louis, Mo.

Q. How long have you lived in St. Louis?

A. I came to St. Louis in 1832; I have been a resident here since that time.

Q. Do you know John F. Darby?

A. Yes, sir.

Q. How long have you known him?

A. I have known John F. Darby 36 or 37 years; I knew him immediately after I came to St. Louis.

Q. What has been his occupation during the last five years?

A. I believe as exchange broker, or banker, as they call them here.

Q. Do you know the time of his suspension?

A. No; I do not recollect.

Q. How long before his suspension, if at any time, did you

161 know of his paper being on the street, in the hands of brokers for sale?

A. Oh, I have known it for some months before he suspended, but I cannot say how long.

Q. Will you state whether a year, more, or not?

A. I don't think I know but little about those things; I was not much in the habit of knowing, but I had his paper offered me sometimes, but how long before I cannot tell.

Q. How frequently did you know of his paper being on the street, and to what extent?

A. Well, I was not in the way of knowing it to any great extent; Mr. Stagg would offer me a piece of paper, and I have sometimes bought it, and sometimes I have not had money to buy with.

Q. Are you an owner of real estate in St. Louis?

A. I am, sir.

Q. Well, sir, do you own real estate on Olive st.; and if so, how near to Darby's building?

A. I own real estate on Olive st., between 3d and 4th, and between 7th and 8th.

Q. You are an owner of real estate in other parts of the city, too?

A. Oh, yes.

Q. Are you familiar with the value of real estate in St. Louis?

A. Well, in some measure, I am. I generally look over the sales to see what real estate is fetching. I have my own opinion of real estate, although I find it does not always correspond with the opinions of others.

Q. Will you state what, in your opinion, is the most valuable real estate in St. Louis per foot?

A. Well, sir, there are several parcels of real estate that I put a pretty high value upon, but I have long been of the opinion that
162 the four corners of Olive and Fifth sts. would be, if not now, *would be* in a very short time, the main centers of business in St. Louis. I look upon them as of the foremost vantage.

Q. Will you state what, in your opinion, was the value of 75 feet front, running back to the alley, on the southwest corner of Fifth and Olive, in the month of April, 1869?

WITNESS. Do you mean the value to sell it—to put it up for sale and sell it—or a man owning it that would put a value on it, a fair value?

Mr. GANTT. I should like to know which of these two it is.

Mr. KNOX. I will leave the question as it is.

WITNESS. Now, if I owned either of these four corners I speak of, I could not put any value on them, for I would not sell them. I would not put a price on them. I believe such is the case with some of the owners of those lots. If I owned either of those corners, the same number of feet running back to the alley either way, no man could buy it from me for $3,000 a foot.

Q. Do you mean with or without improvements?

A. The naked ground I speak of. I am speaking of the naked ground; no man could buy it of me for $3,000 a foot, either of those four corners.

Q. What, in your judgment, would be a fair price for the naked ground, without the buildings?

A. Well, that is a difficult question to answer, because real estate is sold under so many different aspects. Now, as an instance, there was a building sold the other day—I speak of Amaeziah Jones' building—which was a forced sale, for cash; according to my view, that building is worth at least $30,000 more than it was sold for, but you sell ground for cash in that way, and there are very few men that are in a

163 condition to pay these amounts of cash. Mr. Copelin undoubtedly was; had it been sold on time as other sales are made, unquestionably it would have fetched a great deal more money; as to the value of it, no man can tell. I can only give my opinion of the ground; nobody else may think as I do. I think this ground is worth $3,000 a foot—the naked ground. I think that the one opposite is also, or either of the four corners; in fact, there is very little difference, in my opinion, in the value of either of them; the improvements on them are different things.

Q. Do you recollect the time when these improvements were placed on the lot?

A. No; I do not. I reckon they were put there several years ago.

Q. Are they new or old buildings?

A. I am somewhat familiar with the buildings, and the buildings that are on there now, a few years one way or the other with them, don't make any material difference; those buildings are put up, ought to be, to last a century; therefore, a few years one way or the other don't materially affect the value of them, not as it does buildings of a more slight description. I do not know what those buildings cost, but I know pretty well what it would cost to build it now.

Mr. GANTT. That is not the question—he asked when it was put up?

A. Well, I know he asked me, and I answered that I could not recollect. I know it was put up several years ago, but I cannot recollect how many years since.

Mr. KNOX. If you know how much it cost to put it up in 1869—

WITNESS. Oh, it was put up before that.

Q. I am not talking about that. I am talking about the time Lucas bought it. I want to know if you can form an opinion as to what it would cost to put up his building in the spring of 1869?

A. Well, it is impossible for me to tell without going into a
164 calculation and examining the building, but I am satisfied it could not be put up short of $100,000.

Q. Have you been engaged in having buildings erected, and the like, within the last two years?

A. Well, I built one shanty in 1869.

Q. Did you ever have occasion, or take occasion, to examine this building and form an estimate as to how much it could be made to yield, nett revenue?

A. I have never examined the building thoroughly. I have been through it, and I thought it injudiciously arranged. I always supposed so. I have thought that by expending on the building from $10,000 to $15,000, that it could be made to produce a vast deal more rent than it does at present. I think the great fault of the building was that there was no entrance to the upper part of it from 5th st. If I owned the building it would be the first thing I would do, to make an entrance on that street, and then inside I should pretty well gut it before I got through with it, in order to make it pay, or I do not think the arrangement would pay.

Q. Did you make any estimate as to what the building could be made by those alterations to produce, net?

A. Well, as to that, I am well aware that rents are much lower than they were a year ago. I thought last year that I could very readily make this building pay (ten) 10 per cent. on $300,000 by these alterations. I speak of it as rents now are; it might fall below that, but as rents now are, and as I expect they will be again in a very short time, my opinion remains the same as to that. I think the building can be

made as business revives here again rents will go up; we all
165 know they are very much depressed now. I think it can be readily
made to pay a nett of ten per cent. on $300,000, I think. I may be mistaken; it is simply an opinion.

Q. Do you recollect what time the improvements were commenced on the corner of Fourth and Olive?

A. Well, I think they were commenced either in the latter part of February or early in March, 1869. I think so.

Q. What time was this new building of the gas company, opposite, commenced?

A. That was commenced some time afterwards, but how long afterwards I do not recollect exactly; some time, not very long. Jaccard's building was commenced some time afterwards. I cannot tell exactly.

Q. What time were the improvements on your lot west of this, between 7th and 8th, commenced?

A. Well, I think I commenced pulling down the old buildings somewhere in the early part of June.

Q. 1869?

A. Yes, sir; 1869.

Q. What effect did the improvements that were commenced, *and which were commenced*, and which were on 4th and Olive sts. and 5th, have upon the value of this ground here and property?

A. What effect? Why, it unquestionably—by building up fine buildings in the neighborhood, it enhanced the value of the property in the neighborhood; to what extent it takes a smarter man than me to tell. I cannot tell how much it enhances the value. Unquestionably, every building put up brings business into the neighborhood, which enhances the value of the property. I know very well now what this lot directly
west of here can be bought for, and it cannot be bought for any-
166 thing less; it is for sale. I allude to the property on the other
side of the alley; it is on Olive st., precisely the same distance that this is, 127 feet 6 inches; but it is deeper, running south, than this. I think that is 116 feet; this is 75 feet 2 inches. I know exactly what this is; and, though I do not look upon the improvements on it worth one farthing, not a farthing, I know that the property is held at $250,000, and cannot be bought for less. That is my information on it. I don't believe that any man—I rather doubt if you can buy it for that; that is the price that is asked for it.

Cross-examination by Mr. Gantt:

Q. You say that it is held at $250,000?

A. Yes, sir; and cannot be bought for less. You may call that the naked ground.

Q. Have you heard any one offer $240,000 for it?

A. I heard no offers. I bought it once.

Q. You heard no offers?

A. I heard no offers.

Q. You only know the owner would not take less than $250,000?

A. Yes, sir.

Q. The owner of it is Captain Price, is it not?

A. Yes, sir; he set a price once upon it, and I took him up.

Q. That is not the question. I asked if you knew of any one offering $240,000 for it?

A. I heard of no offer being made that I now recollect of. There have been some offers made.

Q. What you know about that property you do not know of your own knowledge, but what you understand from others?

WITNESS. Which property?

COUNSEL. This property at the corner of 6th and Olive.

A. Of course I only knew from the owner of the property.

167 Q. Were you aware, in the spring of 1869, that this property was for sale—this property of Darby's?

A. I did not know it; I never knew it was for sale until I heard incidentally of the sale being made.

Q. Do you know for how much this property is actually renting, how much it yielded, net, to the owner for the last year?

A. I have no knowledge of that. I only know of these things from hearsay. I understood, after the sale was made, from several persons——

Q. Of course I do not ask about that.

A. Well, I answered your question. I do not know.

Q. You think that, by expending a certain sum of money, you could render this property much more profitable than it is now capable of being?

A. I do.

Q. And that you would expend that money mainly in opening an entrance on 5th st. to the upper stories?

A. A portion of it.

Q. Would not the making of an entrance on 5th st. for the upper stories impair the value of at least one of the stores on 5th st.?

A. To a small extent.

Q. Which is the best front, 5th st. or Olive st., for business?

A. In my opinion, 5th st.

Q. In your estimate of what the property would bring, you have considered that this and that store and room ought to be worth, when a proper demand exists for such, so much; and in that manner you have figured the total amount, have you not?

A. Yes, sir, certainly.

Q. At present real estate is very dull in St. Louis, is it not; has not it been declining ever since 1868?

A. In my opinion it has declined as greenback' have arisen.

168 Q. Exactly. Well, sir, that is one cause; but did it not decline between the spring of 1868 and the spring of 1869 more than that difference would account for?

A. The difference between gold and greenbacks? No, sir. In my opinion, it did not.

Q. What was the price of gold in the month of May, 1868?

A. Well, that I cannot answer; but it was somewhere, according to the best of my recollection, between 35 and 40.

Q. What was the price of gold in May, 1869?

A. I cannot recollect; it did not vary materially for a long time; it went down, I recollect, at one time, somewhere to about 33, and then immediately went up again.

Q. Well, was not the price much lower in May, 1869, than in May, 1868?

A. In my opinion it is the other way. I think it was higher.

Q. Higher in 1869?

A. Yes, sir.

Q. Than it was in 1868?

A. Yes, sir, some trifle higher. There was no very material difference, that is, according to the best of my recollection.

Q. You give it, then, as the best of your recollection, that real estate brought better prices and was more saleable in St. Louis, in the spring of 1869 than in the spring of 1868?

A. Well, I do not know. According to the best of my recollection, it was nearly the same thing, but I cannot tell exactly.

Q. You give that as your best recollection?

A. Yes, sir, I do; but that must be a random opinion. I cannot remember.

Q. You were here in both seasons?

A. I was, but I paid no attention to real estate, excepting as I
169 would see the sales reported; but I was neither purchasing nor selling.

Q. You say, if you owned this lot, nobody could buy it for $3,000 a foot.

A. No, sir.

Q. Do you mean by that you would give $3,000 a foot for it?

A. That is a different question altogether; understand me to say if I owned the property all clear and everything paid upon it, no man could buy it; but when you come to buy a piece of property like this, it takes a great deal of money, and few men are prepared to make the purchase; it is brought to sale under very great disadvantages; for instance, that Jones property; therefore a man who happens to have the money, like Mr. Copelin, has a great advantage over his neighbors.

Q. When Mr. Copelin bought this property of Jones, near the corner of Olive and 5th, the sale was a public one, was it not?

A. I believe so.

Q. Do not you know it?

A. Well I saw it on the paper, and have every reason to believe it was a public sale, but I did not attend the sale.

Q. What would you have given for this property in 1869?

A. I would not have bought it, for I was in no condition to buy it?

Q. You are a wealthy man, however. In answering my question it is very different from boasting of your wealth, of course.

A. Well the census man asked me the same question the other day.

Q. You are worth more than a million of dollars, are you not?

A. Well, sir, I do not suppose that I am; but whether I am or not it is not a question that I like to answer.

Q. It is only for the purpose of——

A. This searching into a man's private business in that way is a thing I object to, Mr. Gantt, and I shall decline answering a question of that kind.

170 Q. Well, sir, I insist on an answer to the question.

A. Well, sir, I will answer it. I am not worth over a million of dollars.

Q. Are you worth a million?

A. No, sir.

Q. Are you worth $800,000?

A. Why don't you put the question at once, how many dollars I am worth? This thing of prying into a man's business I object to; I come to give an opinion, and not to expose my own business, and I decline to answer the question.

Q. If you do, say so.

A. I do decline answering such questions.

Q. You decline to answer that question?

A. Yes, I do, sir; I did not come here to expose my own business; I came to give an opinion, as I supposed.

Q. You came here, however, to give an opinion that would influence other peoples' business, and I want to exact such information as I think fit.

A. I came for that purpose, but you might as well ask what Lucas is worth.

Q. No, sir; you do not know that; we will ask him that.

A. Well, sir, I decline to answer because I do not know what I am worth.

Q. You do not know what you are worth?

A. No, sir; I doubt if there is any man in the city knows what he is worth.

Q. You mean to say you do not know whether you are worth $800,000 or not?

A. No, sir; I do not know whether I am or not.

Q. Well, sir; in like manner you do not know whether you are worth a million or not.

171 A. I am satisfied I am not worth a million; but I do not know; I cannot tell; nobody can tell; my property is generally in real estate.

Q. What is the difficulty of estimating the value of real estate?

A. Because I have real estate all over the country; I do not know what it is worth; I cannot tell nor no man can tell; I own a great deal of property in Iowa, and I do not know what it is worth; I put it down sometimes in estimates, and at other times I vary those estimates—it is impossible to tell.

Q. When you say you consider the property at the corner of 5th and Olive, to be the most valuable in St. Louis, or that it will be the most valuable in St. Louis at some time or other, how far do you look ahead for the realization of that expectation?

A. Well, that is impossible to say; but a very few years.

Q. A very few years?

A. Yes, sir.

Q. It depends then on the course things will take in the future, whether or not that expectation of yours will be realized?

A. Well, perhaps it will be the better plan to say, I look upon it as the most valuable property to-day.

Q. The most valuable to-day?

A. Yes, sir; these four corners. I know of no property in the city I would prefer; others may think otherwise.

Q. Do you consider that 5th and Olive is worth more than 4th and Olive?

A. I do.

Q. If this property were yours, and it were clear of all buildings, is the building that is now upon it, such a one as you would put upon it?

172 A. You ask the question, if it were clear—if I owned the property and it was naked, if that is such a building as I would put upon it?

Q. Yes, sir.

A. It is not.

Q. Would not you put a building upon it on an entirely different plan?

A. I certainly should.

Q. Can you tell me when it was that this building was erected, and the ground plan of it laid?

A. I cannot tell that.

Q. Was not it before the war?

A. My impression is it was before the war, but I cannot say it was; my impression is such; I am very clear, very confident it was before the war.

Q. Has not the course of business changed very materially in this quarter since the foundations of this building were laid, and its plan fixed on?

A. Unquestionably.

Q. And that, amongst other things, is the reason why the present building does not correspond to the wants of business at this time?

A. Well, as to that I do not think the building is such as should be put upon it at any time. I think I should have put it differently, although the building is very valuable; I think that scarcely any two men will build a building alike.

Q. Are you prepared to say what, in your judgment, this property would have sold for, if it had been put up for sale for cash in the spring of 1869?

A. No, sir; I am not; I cannot tell anything about it?

Q. You have not said anything. You are not prepared to say?

173 A. No, sir; I am not prepared to say.

Q. If this property were yours, Mr. Erskine, is not the building that is upon it of such a nature that it would be a question whether it would not be desirable to pull down the building entirely and rebuild it?

A. No, sir.

Q. It would not?

A. No, sir.

Q. Instead of that you would make alterations in the building?

A. I would make alterations as a matter of course; it would not pay to pull down such a building as that.

Q. What is the highest price for which you have ever known property to sell in St. Louis?

A. I do not recollect.

Q. You do not recollect?

A. No, sir; I do not.

Q. You can state within certain limits. Did you ever know of property in St. Louis to sell for $2,000 a foot irrespective of improvements?

A. I have not been familiar with the sales; I do not recollect any great deal of property that has been sold by the lot as it was; for instance, here the churches have been put up here, and they would sell the church and lot for so much money.

Q. Exactly; but there would so many feet, and you could say how many dollars a foot?

A. I could, if I made a calculation.

Q. Do you know of any property in St. Louis having been sold for as much as $2,000 per front foot?

A. I do not recollect that I have; it is not very often that these

174 valuable pieces of property are brought to sale any way. I have heard of higher prices being offered than $2,000 a foot.

Q. Yes, being offered; but I am speaking of actual sale?

A. No; not actual sale.

Q. Do you know what Jaccard gave for the property at the corner of 5th and Olive?

A. I have heard of portions of it.

Q. Don't you know that that property was in the market for sometime before it was sold?

A. I do not know. I was very familiar with a part of the heirs that owned that property; it was mixed up amongst 5 or 6 heirs; I know Mr. Sam. Wiggins was one of those heirs.

Q. You mean the corner?

A. Yes, sir, the very corner; the first purchase he made; Jaccard

made, I think, three purchases there; I think there were three distinct purchases; in the first place, there was them old shanties that were on there, and it was owned by 3 or 4 or 5 or 6 heirs, the property was; an old man and an old woman had a life lease in it.

Q. Do you know how much ground was sold on that occasion?

A. Well, my impression is that there was about, I think, 57 feet front on 5th st., and 60 feet deep.

Q. On Olive?

A. On Olive; I think that was it; I may be mistaken, but my impression is—I know it was owned by heirs, mixed up in a way that he could not do anything with it; I know the price he paid.

Q. How much was it?

A. $1,000 a foot; that was some—I cannot say exactly how long since.

Q. $1,000 a foot, on which street?

175 A. On 5th street, 60 feet deep; I think it was 7 or 8 or 9 years ago.

Q. 7 or 8 or 9 years ago?

A. Somewhere along there; I do not know exactly; Sam. Wiggins owned part.

Q. Was not it after 1864?

A. I think not; but I may be mistaken.

Q. Was not it after 1865?

A. Of course, as I cannot tell you whether it was after 1864, I cannot tell you whether it was after 1865; but it was several years ago.

Q. Do you feel pretty confident it was not after 1865?

A. I am pretty confident it was before 1865, but I may be mistaken; I know it was some 2 or 3 or 4 years before Sam. Wiggins died, for he was one of the sellers, and has been dead now 2 years.

Q. Sam. Wiggins?

A. Yes, sir.

Q. That died from cancer.

A. Yes, sir; he has been dead very nearly two years.

Q. How long before his death?

A. Some 2 or 3 or 4 years before his death; I do not recollect; I recollect his death very well, and know it was regretted exceedingly.

Q. At the time that that sale was made was not gold very high, indeed, as compared with paper?

A. Well, that I cannot tell you?

Q. If it was in 1864 or '5, gold was very high, was not it?

A. I know gold fluctuated for several years, and sometimes was considered very valuable, and then again got down some; I cannot tell exactly when gold was at its highest point; that I cannot tell you.

Q. Can you tell what year?

A. No; I cannot tell what year it was.

176 Q. Do not you know it was in the year 1864?

A. Well, I cannot tell you whether it was in 1864; if I was at home I could tell you in a moment, but I do not keep the run of gold; I know it was very high sometimes, and sometimes dull.

Q. You have said a little while ago that you considered of late years the value of real estate had fluctuated with the price of gold?

A. That was within the last two years.

Q. I will confine you to that. Did not the price of gold have an influence on the value of real estate in 1864, '5, and '6 as well?

A. I presume it had, though I cannot tell to what extent; I can recollect within the last year or two perfectly well what the price was; but before that, when it was up and down, I cannot tell.

Q. You are unable to say now what year gold was at its highest point?

A. I cannot remember what year it was. I can recollect within the last year or two about what the price of gold was.

Re-examined by Mr. Knox:

Q. Mr. Erskine, from your knowledge of the nett profits from real estate, what is regarded as a fair return for the per cent. or value of the property nett, on St. Louis real estate property?

A. Well, Mr. Knox, my views differ so materially from other people that I do not like very much to expose my ignorance, perhaps; but I do not know that I have any objection at all to answer that question. I consider the best investment that any one can make in this or any other country is to have a first-rate piece of real estate that will, all clear of everything, give a nett from year to year of 6 per cent.; that is
177 the best investment I can make; I would put everything I had in the world into that; that is my view, but others differ from me.

Q. One other question. You were asked by Mr. Gantt if you ever knew of property being sold for $2,000 per front foot, and you were going on to state what you had heard offered for property: how much have you heard offered for property?

A. I have heard incidentally. I have heard it several times of a piece of property here for which $3,000 has been refused; I was not present to see what took place, but I have no reason to doubt the truth of it.

(Mr. Gantt objected to this portion of the testimony as hearsay.)

Re-cross examined by Mr. Gantt:

Q. You say you think the best investment a man can make is in real estate that will nett him 6 per cent?

A. I do not speak of real estate alone. I say the best investment a man can make of any kind of property is a piece of real estate; the best investment that can be made is in a piece of real estate in the best part of the city, where it will pay him, for a succession of time to come 6 per cent.

Q. Well, do you mean that 6 per cent. is the maximum of profits of capital, and that that is the best arrangement for a large capitalist to make?

A. You may put it in that way, a capitalist to make, because here are men of small means who cannot do it.

Q. So that it is only capitalists?

A. I made the remark that I would be willing to put everything I had in the world, except household furniture, perhaps, horses, dogs, and so forth, into real estate that would pay me 6 per cent.

Q. You have a great deal of real estate, which is entirely un-
178p productive, have you not, sir?

A. I have a great deal of real estate that is not paying me anything.

Q. On which you have to pay taxes?

A. Yes, sir.

Q. And the only value which it has is the expectation, which is very confident expectation, that it will be worth something by and by?

A. Yes, sir.

G. ERSKINE.

Deposition of Trusten Polk.

Deposition of Trusten Polk, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

TRUSTEN POLK, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. Where do you reside?

A. In the city of St. Louis.

Q. Mr. Polk, do you know what property Mr. Darby claimed to own in June, 1869, on Main st. I mean at the time he went into bankruptcy?

A. At the southeast corner of Main and Olive st. of 19 feet in front, more or less; and the lot adjoining it on the south, on the same street, fronting on Main st., of 20 feet, more or less, both being in block No. 10; and also, a lot, I think about 20 feet, in block No. 29, on the west side of Main st. between Locust and Vine.

Q. Have those lots been sold, and if so, how sold, and about what time?

179 A. The two first-named lots were sold on the 14th of May, under order of the district court of the United States, in bankruptcy, by the surviving trustee, in a deed of trust—one of them to Wakeman, as trustee. Let me see which one that is. I think that is the corner, if I recollect right; yes, the corner—the first-named lot, I will say, and the second-named lot were both sold at that date. The first one was sold by the surviving trustee, in a deed of trust executed by Darby and wife to the trustee of Mr. Wakeman, and by the trustees of Mr. Darby, in bankruptcy, to wit, Andrew Park and John K. Tiffany; the second was sold by the same person, trustee, in a deed of trust for Mr. Powers—Messrs. Powers, I think, of the Levee, and the trustees in bankruptcy that I have just named.

Q. Well, sir, in reference to those two lots, will you state whether you were present at the sale, and whether the amount paid for that was equal to, or greater or less than, the amount of prior encumbrances? In other words, whether the estate of Darby would realize anything from the sale of those lots?

A. Well, I will state that the first lot, that is, the corner lot, sold for $35,000, and on that there was a surplus; how much it was I do not know. I do not exactly recollect how much the deed of trust amounted to. The interior lot, the one next to it on the south, sold also for $35,000, and that paid the first deed of trust and a part of the second, leaving the mortgage entirely unpaid.

Mr. GANTT. Leaving a third mortgage unpaid?

A. Yes, sir; entirely unpaid.

Mr. KNOX. Q. In relation to the whole amount of claims on the property, of deeds of trust, what was the gross amount of sales compared with all the encumbrances?

A. I have only spoken of the sales of the two lots.

180 Q. I speak of those two on Olive st.?

A. The whole amount of encumbrances on the two lots was more, considerably; the amount was more, considerably, than the amount bid at the sale and paid at the sale.

Q. For the two lots?

A. Yes, sir.

Q. Well, in relation to the other lots on Main st., on the west side,

how did the amount bid at the sale compare with the encumbrances made by Darby before he went into bankruptcy?

A. Well, it was less by pretty near, if not quite, (I have never seen the exact statement,) *but if not quite*, the second encumbrance; that it was sold on the first encumbrance, and sold for about enough to satisfy that encumbrance, leaving the second encumbrance entirely or nearly unpaid.

Q. About how much was the amount of the second encumbrance?

A. Well, let me see whether I have something to refresh my memory. I am in doubt whether it was $7,000 or $8,000. (Examines document.) I think the second encumbrance was an encumbrance for—professed to be for $8,000—purported to be an encumbrance for $8,000.

Cross-examined by Mr. Gantt:

Q. All those matters appear by deed, do they not, General?

A. The deeds of trust and the amount of them appear by deed.

Q. And do not the occurrences at the sale and the pieces of real estate, then, appear by deed also?

A. I suppose—indeed, I might say I know—that the deeds made by the trustees after the sale, states the amount that the property brought.

181 Q. Was the competition at that sale lively, or was the sale what you would call a dull one?

A. There was a good many persons present at the sale, and but few bidders—comparatively few bidders.

Q. Is not real estate dull in St. Louis this time, and has not it been growing dull for the last two years?

A. Well, I think it is dull at this time, and I think it has been growing dull. Well, I do not know; I cannot say as far as two years back, because I have not had my attention drawn to that, but it has been growing dull for some time back. I will state this, if proper in that connection, that it is duller this spring than I supposed it would be last December—than I supposed la't December it would be this spring.

Q. Are you able to say whether the real-estate market was duller in 1869 than it was in 1868?

A. No, sir; I cannot, for I have not had my attention, in any way, called to the matter.

Signature waived.

Deposition of John A. Sumner.

Deposition of John A. Sumner, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants.

JOHN A. SUMNER, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. What is your business?

A. I am cashier of the 4th St. Bank, in St. Louis.

Q. How long have you been engaged in the banking business?

182 A. 15 years, more or less.

Q. How long have you been cashier of the bank in St. Louis?

A. Since January, 1867—about that time—3½ years.

Q. Can you state where you were in the banking business before that time?

A. In Middletown, Connecticut, and also at La Crosse.

Q. Can you state the range of gold between, say September, 1868, and the 1st of May, 1869?

A. Yes, sir; in September, 1868, gold opened at 44 and a fraction; it continued about 44 until the last week of the month of September, when it fell to 41 and a fraction; then opened at 44; fell to and continued at 43 and 42, and closed at about 41 and a fraction; it fell from 44 to 41 in the month of September, 1868. The following month, (October,) it opened at 39 and a fraction; about the middle of that month, it dropped to 36 and a fraction; it gradually fell to 34, at the close of the month—that is the month of October. In the month of November, it opened at 33, and rose to 34 and 35, and advanced 1½ per cent. in the course of the month, opened at 33 and closed at 35—½ to 2 per cent. advance. In the month of December following, it opened at 35, and fell to 34 and a fraction; there was otherwise but very little variation. In January, 1869, it opened at 35, and rose to 36, and there continued through the month; that is, from 35 to 36 through the month. In February, 1869, there were changes and variations; the fluctuations were more marked; it opened at 35, and sunk to 34, 33, 32, and 30; it closed about 30; the fluctuations were between 30 and 35 during the month. In March, 1869, it opened at 31, closing at 31 and a fraction—quite uniform. In April, 1869, it opened at 31, and rose to 32, 33, and 34, and closed
183 at 34. In May, it opened at 35, and advanced to 37, 38, 39, and 40, and closed at 38. These are figures that I got from our books and financial scources.

Cross-examined by Mr. Gantt:

Q. Did you get these results from memory or from memoranda made at the time?

A. I got these results from official sources from the city of New York. You will bear in mind, if you please, that these are New York rates, not rates here—they vary from ¾ to 1 per cent.

Q. What do you mean by official sources?

A. By the parties who publish such records and make such records in the gold-room in the city of New York.

Q. You call them records. Are they any more than private memoranda, published from time to time?

A. They are published from time to time, daily, at the gold-room, and gathered at the close of certain months.

Q. But they are private memoranda for all that, are they not?

A. I can only say that they are gathered from official sources, from the gold-room in New York.

Q. What do you mean by official? What office did those persons have who collected this data; what office had they?

A. I cannot say, sir, what office they hold, only they come to us as bankers as official memoranda.

Q. They are the reports of the gold room?

A. I suppose they are; I do not know to the contrary.

Q. That is all you know about the office that they hold?

A. That is all I know. The officers of the gold-room make the report.

Q. And that is all you mean when you say these statements
184 are official?

A. Yes, sir; but we cannot go behind the gold-room.

Q. Can you tell me what was the rate of gold in 1864?

A. Not positively, sir; I can by reference to the books.

Q. You can remember, then, can you, that the highest price that gold ever reached was in June, July, or August, 1864?

A. The precise date of the month I cannot tell.

Q. I have given you a margin of three months.

A. I will not speak confidently on that point, sir; I have a record of the matter in my private journal.

Q. You can inform us; and I want a memorandum of the highest price that gold reached in the months of June, July, and the following months of the year 1864; what were the ranges of gold throughout the year 1865 in each month; name the minimum and maximum price.

WITNESS. Do I understand you want the price for June, July, and August, 1864?

COUNSEL. Yes, sir; and all the remaining months of that year.

A. I will furnish you with a statement.

JOHN A. SUMNER.

Deposition of James H. Britton.

Deposition of James H. Britton, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at at the city of St. Louis, in said county and State, on the 26th day of January, 1871, on the part of defendant, but read as evidence on the part of complainants.

JAMES H. BRITTON, of lawful age, being first carefully examined, cautioned, and sworn, deposes and says:

Examined by Col. Gantt:

185 I am president of the National Bank of the State of Missouri, and have been since its organization in November, 1866.

Q. When was the property at the corner of Fourth and Olive streets sold?

A. I think it was in 1869.

Q. You can fix the time exactly by reference to the deed?

A. Yes, sir. (Deed produced.) The deed seems to be dated the 31st day of July, 1869. A contract was made for the property during the summer, some time, sir; some little time before the deeds were executed.

Q. What is the description of that property? How many feet is it on Olive, and how many feet on Fourth?

A. Ninety feet on Fourth by 58 on Olive.

Q. Bounded west by Fourth street and north by Olive?

A. Yes, sir.

Q. What was the price for which the bank purchased it?

(Mr. Knox, counsel for plaintiff, objected to the question as incompetent.)

A. One hundred and fifty thousand dollars.

Q. How was that paid off—in cash, or part cash and part credit?

A. Well, sir, it was all in cash, that is, it was all in cash as soon as they put the title in shape.

Q. How long did it take to complete the title?

A. Well, sir, two or three months, I think; perhaps sixty days; I don't recollect exactly.

Q. How long were you negotiating for the purchase of the property before closing it?

A. Well, there was, perhaps, some talk about it some months before

that; but I suppose the real negotiation was completed within a week or ten days, sir.

Q. Did you effect a purchase by one or more deeds?

A. Well, the understanding was with the heirs of the estate of
186 Mr. Walker, for the purchase of the property, agreeing to bid so much. The property was mortgaged, or secured by deed of trust, for a considerable amount of money; and, in the purchase of the property, we contracted to pay so much money at that date for the property. It was in the regular way, and the property was bid off, I think, for the exact sum which we agreed to give.

Q. Did you get a deed from the trustee?

A. We got a deed from the trustee, and one from Thomas Walker. It was necessary, in order to secure the title, to close it out under the deed of trust, in some way to secure a dower. The advice of the lawyer was to that effect, and we took two deeds.

Q. State where those deeds are recorded?

A. A warranty deed from Thomas A. Walker, in book 393, page 42, and one from the trustee of Isaac Walker, book 388, page 344.

Cross-examination by Mr. Knox, counsel for pl'ff:

Q. What did you say the depth of the lot running eastwardly from Fourth street was?

A. Fifty-eight feet.

Q. Are you familiar with the property known as Darby's building, corner of Fifth and Olive sts.?

A. I am not familiar with the value of property, generally. I know that property.

Q. Were you familiar with it in 1868–'9?

A. Well, sir, about as familiar with it then as I am now.

Q. Did not your bank or some of its directors and officers contemplate moving there at one time?

A. Never, that I am aware of.

Q. Was there no conversation on the subject?

A. I never heard of it.

187 Q. What property in town of the same dimensions as this lot on the corner of Fifth and Olive, seventy-five feet front, and extending back 127 feet to an alley, do you regard as of more value than that?

A. Well, that is a mere opinion; I don't know that it is my duty to answer, or give my opinion about matters and things in general.

Q. Well, sir, I propose the question?

A. Well, it would be a mere opinion. I consider it valuable property; I don't know that it is any more valuable than the property on Fourth and Olive.

Q. Did you ever give a certificate of value as to the property where Darby's building is situated; and if so, when, to whom, and what was the value put on it?

A. I think I gave a certificate once; I cannot tell when, nor I cannot tell what value I put on it.

Q. Who joined with you in that certificate?

A. I cannot tell you that; I know a certificate was prepared by some other parties and signed by me, and at the time it accorded with my judgment.

Q. Have you ever changed your judgment since that time in relation to the value of that property?

A. I don't know that I have materially.

Q. Do you know for what purpose that certificate was obtained?

A. Yes, sir.
Q. State it?
A. My understanding was that it was for the purpose of borrowing money on the property.
Q. Was money borrowed on the strength of that certificate, and if so, when, and of whom?
A. Well, I am not prepared to say whether it was borrowed on
188 the faith of that certificate; I think there was money loaned on it?
Q. Of whom was money loaned on it?
A. I think money was loaned on that property by some life insurance company in Philadelphia.
Q. To what amount?
A. My impresssion is $150,000 00.
Q. Was not that loan made soon after you signed the certificate?
A. I presume so.
Q. Have you any doubt that that certificate was obtained for the purpose of obtaining that loan?
A. Well, I have given so many of that sort of certificates that I don't know exactly; my impression is it was.
Q. Who received the money from the insurance company—the $150,000 loaned on the Darby building?
A. Well, I drew myself on the insurance company for that amount of money, I think, sir.
Q. Did you not receive the money?
A. Yes, sir.
Q. Were you not one of the agents employed to negotiate the loan?
A. I was not.
Q. But did you not receive a portion of the commissions for effecting the loan?
A. Not a continental.
Q. Who applied to you for the certificate?
A. Well, really, I cannot tell you that now; I think one of the gentlemen who signed it with me, perhaps, brought it here.
Q. Do you recollect who signed it with you?
A. I think Mr. Lucas was one of the parties.
Q. Was Charles K. Dickson one of the parties?
189 A. I think he was; I believe he was.
Q. What connection had Mr. Dickson with this bank at that time and since?
A. He was a director of the bank then and since—all the time.
Q. How long have you known John F. Darby?
A. Well, I have known him for twenty years, I imagine, more or less; more particularly since 1857.
Q. How well, since 1857, have you known him—intimately or not?
A. Well, a portion of the time I knew him rather intimately.
Q. How large a portion of the time?
A. Well, sir, a considerable portion.
Q. What has been his pecuniary condition during the time since 1857, as to money affairs? Has he been urgent for money or not?
A. I think he has been rather urgent for money.
Q. Do you know of anybody in St. Louis who has been so urgent and pressing in his demands for money as Mr. Darby?
A. Yes, sir, I know a good many men.
Q. I speak of men in the banking business?
A. Well, I don't know that any man in the banking business ever applied to me for money as often as he has.

Q. Has he not been in the constant habit, since 1857, of applying to you to obtain loans in every way that loans could be obtained, upon real estate, personal security, and collateral?

A. Not constantly.

Q. How frequently has it happened?

A. He has frequently applied for loans in that way; I don't know how frequently.

Q. To what extent was he indebted to your bank in the fall of 1868, at any time?

190 A. I think to the extent of $50,000 or $75,000.

Q. Did not you hold, in the fall of 1868, three deeds of trust, securing notes of $25,000 each—in the fall of 1868?

A. I think we did.

Q. Was not one of those for money you loaned him two years previous to that time?

A. No, sir; I think not; I may have loaned him two years previous to that. I don't recollect it.

Q. Were not all the notes that were secured on the property on which is situated Darby's building, in 1868, owned by the National Bank of the State of Missouri, as far as you know?

A. No, sir; I know they were not.

Q. What note was not?

A. I know there was one or more that I paid the money for myself, out of the proceeds of that property that the National Bank of the State of Missouri did not get.

Q. What was the amount of the one note to which you refer?

A. Well, I cannot recollect distinctly, I think one of $20,000 or $25,000, and another of — I don't recollect the amount.

Q. To whom was the note for $20,000 or $25,000 paid?

A. It was paid to Mr. Duncan, of Duncan & Sherman, of New York; Mr. Duncan, I think, sir.

Q. Did Mr. Stagg hold any note for any party that was paid by you in 1868?

A. Mr Stagg never held a note that belonged to me in the world that I know of.

Q. My question is, did Henry Stagg present to you to be paid in 1868, a note of John F. Darby, secured on any one of the buildings on Fifth and Olive for $25,000?

191 A. Well, he may have held that Duncan note. I don't know how that was.

Q. Do you recollect how long the Duncan note had been running?

A. I don't know, sir.

Q. How long have you known of Mr. Darby being under great pecuniary embarrassment before his failure?

A. Well, sir; I have known that Major Darby wanted to borrow money pretty frequently since 1857, but I always considered him a very wealthy man.

Q. Did you not regard him, for two or three years before his failure, as being in imminent danger of failing?

A. Well, I don't know that I did; I cannot say that I did.

Q. How long before he failed did you apprehend he was in danger of going under?

A. Well, I was a good deal surprised when I heard he had failed.

Q. What has been the business of St. Louis since 1866, from that time forward, year by year—has it been decreasing or increasing?

A. My impression is, increasing.

Q. Have you any doubt about that; I speak of its manufacturing interests particularly?

A. None at all.

Q. Has there been a year since 1868 that there has not been an advance on the business of the previous year?

A. I imagine not.

Q. Did you know of parties negotiating, besides Mr. Lucas, for the purchase of the Darby building and property in 1868?

A. Well, I don't know what you would call negotiating.

Q. People talked about it?

A. I never heard of negotiations going on about it.

Q. Did you know of any parties in New York whom you knew
192 desired to purchase the property?

A. I know one gentleman living in New York who was willing to purchase it.

Q. At what time?

A. At some time within the year that Major Darby sold it or made this loan on it.

Q. Do you know what price he was willing to pay for it?

A. I think he would have given $150,000 for it at least; perhaps more.

Q. Do you mean that subject to encumbrance or without?

A. Oh, no; he would not have paid it subject to incumbrance.

Q. You gave your deposition, did you not, in December, 1869?

A. Yes, sir.

Q. Was not your recollection more fresh then than at present in relation to Mr. Darby's property and Mr. Darby's pecuniary condition?

A. Perhaps it was.

Q. I will show you the deposition and you can state whether that is your signature. (Paper handed to witness.)

A. That is my signature, sir.

Q. Did you not state at that time as follows: "He has been urgent in his demands for money since 1857; I have known for a number of years that his real estate was encumbered; I didn't know to what extent; I have known at different times of his borrowing money on real estate; I have had frequent applications from him to borrow money on personal endorsement and collaterals, and in every shape; I can't name any time specifically; it has been numerous times since 1857; whenever he applied to me for loans he was rather importunate; I was connected with the bank during all the time he was hard pressed; I can't say during the whole time, but I was satisfied he could not stand up under
193 the pressure; I had an opinion to that effect; He kept up longer than I supposed he would." Is that your statement?

A. I presume it was.

Q. Do you wish to qualify it in any way?

A. Yes, sir; I state to-day that I was surprised when Mr. Darby failed. A few weeks before that there was a rumor that he had failed, and Major Darby was looking about for the man that started it, saying it was a damned lie; that he had plenty of property and was rich, but he could not find the man who started the rumor; he traced it up to somebody that was talking about somebody else, and got it mixed up with Mr. Darby.

Q. Did you hear his pecuniary condition questioned for two years previous to his failure?

A. Well, perhaps I did.

Q. Was not it frequently questioned among banking circles?

A. Well, I cannot say.

Q. Did you not hear it spoken of several times?

A. I have heard it spoken of.

Q. For two or three years before his failure, was it a very uncommon thing to hear it spoken of?

A. Well, I can't say that it was not a very uncommon thing, or rather that it was a very common thing to hear it spoken of?

Q. Do you wish to be understood as saying that you don't know whether it was a common or uncommon thing to hear it spoken of?

A. I mean to say that it was not a very common thing to hear it spoken of, that Major Darby was going to fail.

Q. How long did you hear opinions of that kind expressed before his actual failure?

A. Well, I can't undertake to say.

194 Q. This deposition was given in December, 1869, I believe?

A. Yes, sir; I think it was.

Q. In that deposition did you not state as follows: "To the best of my opinion, during the last two years, Mr. Darby's condition has been talked of by bankers as very precarious; I have heard opinions expressed, I don't know that it was very often, that it was only a question of time when he would go under." Was that your statement at that time?

A. I imagine it was, sir.

Q. Did you not know of Mr. Darby's being the highest bidder for county bonds to a large amount in September, 1868?

A. Well, I know that he bid for some and got them; I imagine he was the highest bidder.

Q. Did you not know at that time that he had no money with which to pay for them, and did he not borrow from your bank money with which to make the purchase?

A. No, sir; he made the purchase without paying for them, and I knew nothing about it until he bought them.

Q. The question I ask is, did you not know at that time that he had no money with which to pay for them, and did he not borrow money from your bank with which to pay for them?

A. He did after he bought them; I don't know whether he had money before or not.

Q. How soon after the purchase before he made application to you for the money?

A. The same day.

Q. How soon afterwards did he get the money?

A. The same day; I paid for the bonds the same day.

Q. Did the bonds go in his hands directly from the county to

195 your bank?

A. Directly from the county to the bank; sent a messenger to the officer to get them.

Q. Do you know of Mr. Darby's drawing bills of exchange on the East, without having the money with which to meet them before his failure?

A. I never knew of his drawing any without having the money to meet them. Never saw a protested draft of his in my life. I would like to correct that. I have seen one of his drafts protested in 1858–9. There was a draft protested in New York endorsed by him. It was sent to me for collection. That is the only one I ever saw.

Q. The question I ask you now is whether information did not come

to you, as a banker, that Mr. Darby was drawing drafts on New York without having any money with which to pay for the same?

A. I never heard of it.

Q. Did you not hear of checks being drawn against his bank previous to his failure which he could not meet until he went out and borrowed the money?

A. I did not.

Q. Do you know what insurance companies or banking houses Mr. Lucas was connected with in 1868–'9?

A. I do not.

Q. Was he president of the De Soto Insurance Co.?

A. He was; that is, if it was organized as early as that. He has been its president from its organization. I don't know when it was organized.

Q. Was he a director of the Boatmen's Savings Institution during the last several years?

A. I think so.

Q. What other banking institution has he been connected with as a director or officer during the last two or three years, to your knowledge?

A. I do not know of any, except the Boatmen's. I do not think of any.

196 Q. Were Mr. Darby's drafts or bills of exchange ever offered to your bank for sale before his failure?

A. Yes, sir.

Q. Were you in the habit of buying them.

A. Bought them sometimes, when it suited us, and when it didn't we did not.

Q. Was there no question as to his bills, in the estimation of the officers of the bank who had to pass on them, as to their safety?

A. We never took any of them that were not paid.

Q. Had none of your directors or officers of the bank any conversation as to the safety, or otherwise, of buying Mr. Darby's bills on the East before his failure at any time?

A. I do not think he ever offered us anything that was not pretty well secured. Mr. Knox's name was on some, and other names that were represented as being pretty good. I have frequently declined them with Mr. Knox's name.

Q. Do you mean that Mr. Knox endorsed bills of exchange on the East—on New York?

A. Yes, sir; and notes payable in St. Louis.

Q. I am not speaking of notes; but bills of exchange.

A. I think I have seen bills of exchange, or his notes, payable in New York, with your endorsement.

Q. The question I ask is whether your bank, or its officers, ever had conversations as to the safety of buying bills of exchange on New York?

A. Well, sir, I don't think we ever did, as to bills or notes endorsed by you on New York.

Q. How long before Mr. Darby's failure do you know of his notes being in the hands of street brokers?

197 A. I think every year since 1857, with Mr. Knox's name on them.

Q. How often since that time?

A. Pretty often.

Q. To what amount?

A. Generally 5,000-dollar amounts.

Q. Was that every month during that whole time?

A. No, sir. Every year since that time.

Q. At what rates were those notes offered to you?

A. I never bought one of them in my life; and I don't recollect at what rates they were offered.

Q. In your deposition, (and let me say I do not refer to it for the sake of embarrassing you, but because your recollection was fresher at that time,) did you not testify in that deposition as follows: "During the last two years we have frequently negotiated paper for Mr. Darby at 8 per cent., and sometimes a little higher rate. I have had his paper offered to me at from one to one and one-half per cent. a month; but I never bought any of it?"

A. That is true.

Q. How often was that paper offered at that rate?

A. I can't state.

Q. Was his paper going at that rate since 1857, continuously?

A. I do not imagine, not since 1857, that his paper was not sold at that rate on the street at some time or other during each year.

Q. Is it generally known by bankers when the notes of other bankers are on the street for sale or in the hands of brokers?

A. It may, or may not. I can't tell. No doubt there are a great many on the street that I never see or hear of.

Q. When notes are on the streets monthly, issued by men doing a banking business in St. Louis, do you mean to be understood as
198 saying that bankers do not generally have knowledge of that fact?

A. Some do not. I think we have less knowledge than anybody else, from the fact that we never bought them.

Q. How is it generally?

A. I can't say, as I don't know the practice.

Q. Do you know whether, in 1867 or 1868, the private banks here made monthly statements to the Government collector of their condition?

A. I know the law required of all chartered banks and bankers, except national banks, to make a return of the amount of their deposits, with a view to determining the amount of Government tax to be paid by them; but it did not show their pecuniary condition. Whether it was ever done or not, I don't know.

Q. Were not these returns published regularly in the papers?

A. I have seen returns published in the papers; but you can't prove by me that they were made by the banks.

Q. I don't ask that. I ask whether the statements purported to be what was required by the Government, to show the pecuniary condition of the private banks in 1867-'8—purporting to be given by the bank and verified by the affidavit of the bankers—were not published monthly in the papers of St. Louis?

(Mr. Gantt objected to the question.)

A. I have seen statements—I do not know whether they purported to be that way or not—I have seen statements published in the papers.

Q. Monthly?

A. I never observed them monthly. I, perhaps, saw them monthly. Saw them several times, and sometimes read them.

Q. Did you not, in your deposition, to which I have referred, state: "I understood that the life insurance company was willing to loan
199 him $150,000 on it, (on the Olive street property,) and when they furnished him the money I think they desired a statement as to the value of the property, and I expressed it in writing. I estimated it as worth $300,000, and I think it is worth that now."

A. I imagine I expressed that opinion, sir.

Q. The reason I speak of it now is, you could not recollect the amount that you swore to?

A. I have this to say in regard to these certificates: I have been frequently called on to value property that way where parties made a loan and where it was understood distinctly that they gave fifty per cent. only of the value of the property, and therefore I have been liberal in these valuations, and so stated to the parties where they have been made.

Q. Did not you further state at that time, "I think this property has improved in value by reason of the improvements made about there in 1869, on Fourth and Olive street, but I cannot state the extent?"

A. I stated it, sir.

(Signed) J. H. BRITTON.

Deed of Darby & wife to F. Vallé and A. R. Newcomb.

Deed of John F. Darby and wife to F. Vallé and A. R. Newcomb, dated October 28th, 1868.

[U. S. stamp, $56 00. J. F. D., Oct. 28, 1868.]

This deed made and entered into this twenty-eight' day of October, in the year of you Lord eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, party of the one part, and Abial R. Newcomb and Francis Vallé, of the city and county of St. Louis, and State of Missouri, party of the second part, and the American Life Insurance Company, a corporation in the city of Philadelphia, in the State of Pennsylvania, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one
200 dollar to them in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey, and confirm unto the the said party of the second part, and their heirs and assigns, a certain lot, piece, or parcel of ground, situate, lying, and being in block number *one* hundred and sixteen, (216,) of the city of St. Louis, in the State of Missouri, and described as follows, to wit: Beginning on the western line of Fifth street at a point fifty feet and eleven inches southwardly from the southern line of Olive street, which point is in the middle or centre of the northern wall of the third or southern building of the block of buildings on the southwest corner of Fifth and Olive streets; thence southwardly by the line of Fifth street, twenty-four feet one inch, be the same more or less, to the lot said to belong to Basil W. Alexander; thence *north*wardly by and with the line of the lot said to belong to Basil W. Alexander, and directly on a line parallel to the south line of Olive street, one hundred and twenty-seven feet six inches, more or less, to the eastern line of the alley running through said block: thence northwardly by and with the eastern line of said alley, twenty-five feet one inch, more or less, to the said middle or centre of the northern wall of said third building from Olive street; thence by a line running directly in the middle or centre of said northern wall and on a line parallel to the southern line of Olive street, one hundred and twenty-seven feet six inches, more or less, to the place of beginning on Fifth street; said lot of ground containing a front of twenty-four feet and one inch on Fifth street, by a depth of one hundred and twenty-seven feet six

inches westwardly to alley, bounded on the east by Fifth street, and on the south by the lot said to belong to Basil W. Alexander, on the west by an alley fifteen feet wide, on the north by land of John F. Darby:

To have and to hold the same, together with all the appurten-
201 ances, to the said party of the second part, and to his successor hereinafter designated, and to the assigns of such successor for ever.

In trust, however, for the following purposes:

Whereas said John F. Darby hath executed and delivered to the party of the third part, eleven certain negotiable promissory notes of even date herewith, and payable to the order of the American Life Insurance Company, each bearing interest from maturity at the rate of eight per centum per annum, the first note whereof being for principal is for the sum of forty thousand dollars and is payable five years after date, and the remaining ten notes, being for the semi-annual interest instal'ments thereon, are each for the sum of sixteen hundred dollars, and are payable respectively in six months, twelve months, eighteen months, two years, two years and six months, three years, three years and six months, four years, four years and six months, and five years after date, all of said notes being payable at the office of the American Life Insurance Company, in the city of Philadelphia.

And whereas, for the purpose of better securing said indebtedness, said John F. Darby doth covenant and agree with said party of the third part, said American Life Insurance Company and its assigns, that all general and special taxes on said property have always been promptly paid, and that the taxes accruing on said property for this present year shall be paid within the time prese*n*ted by law for the payment of the same, and there shall be no default or delinquency in the payment of the same; and in case there shall be any default in the punctual payment of the taxes on said property *or* any time hereafter, said party of the third part or its assigns, at its option, may pay said taxes in case of any neglect *or* redeem said property; and all amounts so expended shall become a debt due, additional to the indebtedness aforesaid, and secured in like manner by this deed of trust, and shall bear interest from the time of payment thereof at the rate of eight per cent. per annum. And

also for the purpose of further securing said indebtedness, said
202 John F. Darby covenants and agrees with party of the third part and its assigns, that he will insure all *then* of the *stens* constituting the whole of said block and buildings belonging to said John F. Darby, on the southwest corner of Olive and Fifth streets, to the amount of one hundred thousand dollars, in some solvent insurance companies, and, during the continuance of this deed of trust, will keep up such insurance to the extent of one hundred thousand dollars on the whole block of said buildings for the benefit of the holder or holders of said indebtedness, and to that end will assign, and during the continuance of this deed of trust will keep assigned, all the policies of insurance to the trustees in this deed of trust specified to receive any indebtedness which may be due and owing from the said John F. Darby to the said party of the third part in this deed named or its assigns, so, in the event of a loss by *him* during the existence of any indebtedness by said party of the first part to the said party of the third part or its assigns, the proceeds of such policies of insurance shall be collected by said trustees in this deed of trust named, and applied to the payment of said indebtedness, unless otherwise paid when due, and to that end will also pay during said lien all premiums or assessments payable on or under such policies. And further agrees that, in case such insurance

be not so effected and kept up assigned, said party of the third part or its assigns, may, for the benefit as aforesaid of said indebtedness, effect and keep in existence such insurance, and all moneys thus laid out shall become a debt additional to the indebtedness aforesaid, be secured in like manner by this deed of trust, and shall bear interest from the time of its expenditure at the rate of eight per cent. per annum.

Now, if said promissory notes shall be punctually paid at ma-
203 turity, and if the covenants aforesaid shall be well and truly kept, and all amounts expended as aforesaid shall be refunded and repaid to the said party of the third part or its assigns, by said John F. Darby or his legal representatives, then the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if said promissory notes or either of them, or any part of either of them shall be allowed to remain due and unpaid, or in case payment of an amount expended as aforesaid shall not be made, or in case said covenants, or any part thereof, shall not be fully kept, then this deed shall remain in force; and the said party of the second part, or either of them acting singly and alone, or in the event of their sickness, decease, absence from the city of St. Louis, Missouri, or other inability, or neglect, or refusal to act, then the sheriff of the county of St. Louis, Missouri, for the time being, as conditional successor for said party of the second part herein, to the title of the property hereby conveyed, and to the trust herein created respectively, the same may proceed to sell the property hereinbefore described, at public vendue, to the highest on the premises, for cash, first giving sixty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed and published in the *city* English language, in the city of St. Louis; and, upon such sale, shall execute and deliver a deed or deeds, in fee-simple, of the property sold, to the purchaser or purchasers thereof, and receive the proceeds of sale, out of which shall be paid—first, the cost and expenses of executing this trust, including compensation to the trustees for their services; and next, said moneys, with interest as aforesaid, which may have been expended by the holder or holders of said indebtedness for taxes or insurance, either or both; and next, said notes, or such of them as shall then due, whether on their face or by agreement here-
204 in; it being hereby distinctly agreed and understood that any failure to pay and refund any moneys on demand which may have been paid out by the holder or holders of said indebtedness, on account of taxes or insurance as aforesaid, or to pay, when due, any of said interest notes, shall cause said principal note to become due forthwith, and sale hereunder may be made, to pay the same, and interest thereon up to the day when the proceeds of sale of said property are applied by said trustees to the discharge of the same, whether due on its face or not; and the remainder, if any, shall be paid to the said party of the first part, John F. Darby, or his legal representatives.

And the said party of the second part covenants faithfully to perform and fulfil the trust herein created.

In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
ABIAL R. NEWCOMB, *Trustee.* [SEAL.]
FRANCIS VALLÉ, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—

NOTE.—The words "successor," 1st page; "or its assigns," 2nd page: "or either of them, acting singly and alone," 3d page, interlined before signing.

HENRY PAPIN.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that John F. Darby, and Mary M. Darby, his wife, who are personally known to the undersigned, a notary public within and for the county aforesaid, to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed, for the uses and purposes therein mentioned.

And the said Mary M. Darby, being by me made acquainted
205 with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Given under my hand and official seal, at St. Louis, this 28th of October, A. D. 1868.

[SEAL.]

HENRY PAPIN,
Notary Public St. Louis County.

Filed and recorded October 28th, 1868.

JULIUS CONRAD,
Recorder.

[U. S. stamp 05-ct. W. C. K. Jan. 26, '71.]

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed, executed by John F. Darly and wife, to trustees of the American Life Ins. Co., together with acknowledgment, date of filing and recording thereof, as the same remains of record in my office, 371, page 186.

Witness my hand and official seal at office this 25th day of Jan'y, 1871.

[SEAL.]

W. C. KENNETT,
Recorder.

Darby & wife to Moss Prewett.—Mortgage.

Deed of mortgage of John F. Darby and wife to Moss Prewett, dated September 19th, 1868.

[$9 00 U. S. stamp, J. F. D. 19, 9, '68.]

This mortgage deed, made this nineteenth day of September, in the year of our Lord eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, of the one part, and Moss Prewett, of the county of Boone, in the State of Missouri, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to them, cash in hand, well and truly paid by the
206 said party of the second part, the receipt of which is hereby ac-

knowledged, they, the said party of the first part, have granted, aliened, transferred, conveyed, and confirmed, and by these presents do grant, alien, transfer, convey, and confirm unto him, the said Moss Prewett, and to his heirs and assigns, a certain lot or piece of ground situated, lying, and being in the city of St. Louis, in block (No. 10,) ten, of said city, and described as follows, to wit: Beginning at a point on the east side of Main street, nineteen feet six inches southwardly from the south side or line of Olive street, which point is in centre or middle of the south wall of the corner building situated on the northwest corner of said block number ten, (10,) and running thence southwardly along the eastern line or side of Main street, twenty feet, more or less, to the centre or middle of the wall, of the second building on Main street, south of Olive street, in said block (No. 10,) ten, being the south wall of said second building; thence eastwardly by a line running directly in the middle or centre of said southern wall of the said second store or building, and on a line directly parallel with the southern line or side of Olive street, ninety feet, more or less, to the western side or line of Commercial street; thence northwardly by and with the western line of Commercial street, twenty feet, more or less, to the centre or middle of the southern wall of the corner store, in block number ten, (10,) which corner store is bounded north by Olive street; thence by a line directly in the centre or middle of said southern wall of the corner building, and on a line directly parallel to the southern line of Olive street, ninety feet, more or less, to the place of beginning on Main street; bounded on the west by Main street, on the south by land belonging to John F. Darby and leased to William T. Christy and Robert K. Woods, on the
207 east by Commercial street, and on the north by land belonging to John F. Darby: To have and to hold the said lot or piece of ground above described unto him, the said Moss Prewett, and to his heirs and assigns, together with all the rights, privileges, and appurtenances thereto belonging or in any wise appertaining.

This deed is, nevertheless, made upon this express condition, that is to say, the said John F. Darby is justly indebted to Moss Prewett, in a promissory note for the sum of eight thousand dollars, bearing date the twentieth day of June, in the year of our Lord eighteen hundred and sixty-six, payable three years after date; also, one other promissory note, bearing date the twentieth day of June, in the year of our Lord eighteen hundred and sixty-six, for the sum of three hundred and twenty dollars, payable two years and six months after date; and one for the like sum of same date, payable three years after date. All of said notes being made by John F. Darby in favor of Moss Prewett. And he, the said John F. Darby, being desirous to secure the prompt payment of the said promissory notes, hath made this his mortgage deed on the lot of ground hereinbefore described, it being well understood between the parties to this deed that there is an incumbrance on said lot of ground already, previous to this incumbrance.

Now, therefore, if, when the said promissory note hereinbefore specified become due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then and in that case this mortgage deed shall become void and of no effect, and the property hereinbefore described shall be released and reconveyed to him, the said John F. Darby, free, quit, and discharged from the incumbrance hereby created; but if, on the day or days when the said promissory notes hereinbefore described become due and payable, the same, or either of them, shall be in arrear and unpaid, then and in that case, it shall
208 and may be lawful to and for the said Moss Prewett to file his

bill to foreclose the equity of redemption and have said mortgaged premises sold to pay and satisfy the amount due according to law.

In testimony whereof the said John F. Darby and Mary M. Darby, his wife, have hereunto set their hands and seals the day and year first above written in this deed.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that John F. Darby and Mary M. Darby, his wife, who are personally known to the undersigned, a notary public within and for said county, to be the persons whose names are subscribed to the foregoing deed, as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained.

And the said Mary M. Darby, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this twenty-first day of September, A. D. eighteen hundred and sixty-eight.

[SEAL.] JOSEPH L. PAPIN,
Notary Public St. Louis County, Mo.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, do certify that the foregoing instrument of writing was filed for record in my office Sept.
209 25th, 1868, and is truly recorded in book 371, page 17.

Given under my had and official seal the date aforesaid.

[SEAL.] JULIUS CONRAD,
Recorder.

Moss Prewett to John F. Darby.

Deed of release from Moss Prewett to John F. Darby, dated September 19th, 1868.

This deed of release, made this nineteenth day of September, in the year of our Lord eighteen hundred and sixty-eight, by and between Moss Prewett, of the county of Boone, in the State of Missouri, of the one part, and John F. Darby, of the city and county of St. Louis, in the State of Missouri, of the second part, witnesseth:

Whereas, John F. Darby and Mary M. Darby, his wife, did, by deed made and executed on the twentieth day of June, in the year of our Lord eighteen hundred and sixty six, grant, alien, transfer, convey, and confirm unto him, the said Moss Prewett, and his heirs and assigns, a certain lot or piece of ground, situate, lying, and being in the city of St. Louis, in block (No. 116,) one hundred and sixteen, of said city, and described as follows, to wit: Beginning on the west side of Fifth street at a point ninety-five feet southwardly from the south line or side of Olive street, which point is the northern line of the lot of Basil W. Alexander; thence westwardly, by and with the line of said Basil W. Alexander's, and on a line directly parallel with the southern line or side of Olive

street, one hundred and twenty-seven feet six inches, to the eastern side, or line of the alley running through said block; thence northwardly, by and with the eastern line of said alley, twenty-five feet, to the centre of the south wall of the middle building of the three store-houses erected on the southwest corner of Fifth and Olive streets; thence east-
210 wardly, by a line running directly in the middle of the said southern wall of said middle building, and on a line running directly parallel to the southern side or line of Olive street, one hundred and twenty-seven feet six inches, to the western line or side of Fifth street; thence southwardly, by and with the western line or side of Fifth street, twenty-five feet, to the line of Basil W. Alexander, the place of beginning. Said lot of ground a front of twenty-five feet on Fifth street, by one hundred and twenty-seven feet, six inches westwardly in depth, to an alley bounded on the *the* east by Fifth street, on the south by Basil W. Alexander, on the west by an alley, and on the north by land of John F. Darby, which said deed of conveyance was made to him, the said Moss Prewett, for the following purpose, that is to say: The said John F. Darby did, on the day of the date of said deed of conveyance, make his nine several promissory notes, all bearing even date with said deed of conveyance, and all in favor of Moss Prewett, one for the sum of seven thousand dollars, payable one year after date; one for the sum of eight thousand dollars, payable two years after date; one for the sum of eight thousand dollars, payable in three years; one for the sum of nine hundred and twenty dollars, payable six months after date; one for the like sum payable one year after date; one for the sum of six hundred and forty dollars, payable eighteen months after date; one for the like sum, payable two years after date; one for the sum of three hundred and twenty dollars, payable two years and six months after date, and one for the like sum payable three years after date. And he, the said John F. Darby, being desirous to secure the prompt payment of the said promissory notes, did make his mortgage deed on the lot of ground hereinbefore described, and in and by the terms of said mortgage deed it
211 was provided, amongst other things, that if he, the said John F. Darby, or any person for him, should well and truly pay and satisfy said promissory notes, then and in that case the said mortgage deed should become void and of no effect, and the property hereinbefore described in this deed should be released and reconveyed to him, the said John F. Darby, free, quit, and discharged of the encumbrance thereby created; but if said promissory notes should not be paid and discharged, then and in that case the said Moss Prewett might proceed to file his petition to foreclose the equity of redemption, and have said mortgaged premises sold to satisfy and pay the amount due; all of which will more fully and amply appear on reference to the said mortgage deed, as the same remains of record in the recorder's office of St. Louis County, in book No. 327, page 68. And he, the said John F. Darby, having discharged said indebtedness, is entitled to a deed of release for the same.

Now, therefore, know all men by these presents that I, Moss Prewett, for and in consideration of the premises, and of the sum of one dollar to me, cash in hand, well and truly paid by the said John F. Darby, the receipt of which is hereby acknowledged, I, the said Moss Prewett, hath granted, aliened, transferred, conveyed, and confirmed, and by these presents do grant, alien, transfer, convey, and confirm unto him, the said John F. Darby, and to his heirs and assigns, the lot or piece of ground hereinbefore described, free, clear, and discharged of the incumbrance in said mortgage deed created: To have and to hold the said lot or piece of ground, hereinbefore described unto him, the said John F. Darby, and

to his heirs and assigns, and to his and their only proper benefit and behalf forever.

In testimony whereof the said Moss Prewett hath hereunto set his hand and seal the day and year first above written in this deed of release.

MOSS PREWETT. [SEAL.]

212 Signed, sealed, and delivered in presence of—
FRANK TRIPLETT and
W'M A. HORNER.

STATE OF MISSOURI,
County of Boone, ss:

Be it remembered that, on this 24th day of September, A. D. eighteen hundred and sixty-eight, before me, the undersigned, clerk of the county court within and for the county and State aforesaid, came Moss Prewett, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said court at office, in Columbia, the day and year above-written.

[SEAL.] WARREN WOODSON, *Clerk.*
Per W'M A. HORNER, *D. C.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned recorder for said county, certify that the within deed was filed for record in my office Sept. 25th, 1868, and is truly recorded in book 369, p. 259.

Witness my hand and official seal, date aforesaid.

JULIUS CONRAD, *Recorder.* [SEAL.]

J. F. Darby & wife to Moss Prewitt.

Deed of John F. Darby and wife to Moss Prewitt, dated June 20th, 1866.

[U. S. stamp $22 00. J. F. D. 20, 7, '66.]

This deed, made this twentieth day of June, in the year of our Lord eighteen hundred and sixty-six, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, of the one part, and Moss Prewitt, of the county of Boone, in the State of Missouri, of the second part, witnesseth:

That the said party of the first part, for and in consideration
213 of the sum of one dollar to them, cash in hand, well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, they, the said party of the first part, have granted, aliened, transferred, conveyed, and confirmed, and by these presents do grant, alien, transfer, convey, and confirm, unto him, the said Moss Prewitt, and to his heirs and assigns, a certain lot or piece of ground, situated, lying, and being in the city of St. Louis, in block (No. 116,) one hundred and sixteen, of said city, and described as follows, to wit: Beginning on the west side of Fifth street at a point seventy-five feet southwardly from the south line or side of Olive street, which point is the northern line of the lot of Basil W. Alexander; thence westwardly, by and with the line of said Basil W. Alexander and on a line directly parallel with the southern line or side of Olive street, one

hundred and twenty-seven feet six inches, to the eastern side or line of the alley running through said block; thence northwardly, by and with the eastern line of said alley, twenty-five feet, to the centre of the south wall of the middle building of the three store-houses erected on the south-west corner of Fifth and Olive streets; thence eastwardly, by a line running directly in the middle of the said southern wall of said middle building, and on a line running directly parallel to the southern side or line of Olive street, one hundred and twenty-seven feet six inches, to the western line or side of Fifth street; thence southwardly by and with the western line or side of Fifth street, twenty-five feet, to the line of Basil W. Alexander, the place of beginning. Said lot of ground containing a front of twenty-five feet on Fifth street by one hundred and twenty-seven feet six inches westwardly in depth to an alley, bounded
on the east by Fifth street, on the south by Basil W. Alexander,
214 on the west by an alley, and on the north by land of John F.
Darby: To have and to hold the said lot or piece of ground, above described unto him, the said Moss Prewett, and to his heirs and assigns, together with all the rights, privileges, and appurtenances thereto belonging or in anywise appertaining.

This deed is, nevertheless, made upon this express condition, that is to say, the said John F. Darby hath this day made his nine several promissory notes, all bearing even date herewith and all in favor of Moss Prewitt: one for the sum of seven thousand dollars, payable one year after date; one for the sum of eight thousand dollars, payable two years after date; one for the sum of eight thousand dollars, payable three years after date; one for the sum of nine hundred and twenty dollars, payable six months after date; one for the like sum, payable one year after date; one for the sum of six hundred and forty dollars, payable eighteen months after date; one for the like sum, payable two years after date; one for the sum of three hundred and twenty dollars, payable two years and six months after date; one for the like sum, payable three years after date. And he, the said John F. Darby, being desirous to secure the prompt payment of the said promissory notes, hath made this his mortgage deed on the lot of ground herein before described, it being well understood between the parties to this deed that there is an incumbrance on said lot of ground already, previous to this mortgage.

Now, therefore, if, when the said promissory notes hereinbefore specified become due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then and in that case this mortgage deed shall become void and of no effect, and the property
hereinbefore described shall be released and reconveyed to him,
215 the said John F. Darby, free, quit, and discharged from the incumbrances hereby created; but if, on the day or days when the said promissory notes hereinbefore described become due and payable, the same, or either of them, shall in accordance paid, then and in that case, it shall and may be lawful to and for the said Moss Prewitt to file his bill to foreclose the equity of redemption and have said mortgaged premises sold to pay and satisfy the amount due according to law.

In testimony whereof the said John F. Darby and Mary M. Darby, his wife, have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]

Signed, sealed, and delivered in presence of—
JOSEPH L. PAPIN.

STATE OF MISSOURI, *County of St. Louis, ss :*

Be it remembered that, on the sixth day of July, A. D. eighteen hundred and sixty-six, before me, the undersigned, a notary public within and for the county and State aforesaid, came John F. Darby and Mary M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as the parties thereto, and they severally acknowledge the same to be their act and deed for the purposes therein mentioned.

And the said Mary M. Darby, wife of said John F. Darby, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] JOSEPH L. PAPIN,
Notary Public St. Louis County.

216 STATE OF MISSOURI, *County of St. Louis, ss :*

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office July 10th, 1866, and is truly recorded in book 327, page 68.

Witness my hand and official seal the date aforesaid.

[SEAL.] JULIUS CONRAD,
Recorder.

(Endorsed.) "Release filed for record Sept. 25th, 1868."
JULIUS CONRAD,
Recorder.

J. F. Darby and wife to Campbell & Dickson.

Deed of trust. John F. Darby and wife to Campbell & Dickson, use of E. S. Willing, dated June 15th, A. D. 1859.

This deed, made and entered into this fifteenth day of June, eighteen hundred and fifty-nine, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, Missouri, party of the first part; Robert Campbell and Charles K. Dickson of the same city, county and State, party of the second part; and Edward Shippin Willing of Philadelphia, Pennsylvania, party of the third part, witnesseth :

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey and confirm unto the said party of the second part, a certain lot or piece of ground in the city of St. Louis, in the State of Missouri, and described as follows : Being in block number one hundred and sixteen of the city of St. Louis, to wit, beginning at a point on the western line of Fifth street, thirty-five feet southwardly from the northeast corner of said block number one hundred and sixteen, and running thence
southwardly on the western line or side of Fifth street, twenty
217 feet; thence westwardly by a line directly parallel to the southern

line or side of Olive street, one hundred and twenty-seven and a half feet, to the eastern line of the alley through said block; thence northwardly twenty feet; thence eastwardly by a line directly parallel to the southern line of Olive street, one hundred and twenty-seven and a half feet, to the place of beginning; said lot containing twenty feet in front on Fifth street by one hundred and twenty-seven and a half feet deep to the alley; bounded on the east by Fifth street, on the south by land of John F. Darby, on the west by an alley, and on the north by land belonging to said John F. Darby: To have and to hold the same with the appurtenances, to the said party of the second part, and to the survivor of them, and to the heirs and assigns of such survivor forever.

In trust, however, for the following purpose: Whereas John F. Darby hath this day made his certain eleven promissory notes, all bearing even date herewith, and all drawn in favor of Edward Shippin Willing, negotiable and payable at the Bank of Commerce, in the city of Philadelphia: one for the sum of ten thousand dollars, payable five years after date; one for five hundred dollars, payable six months after date; one for the like sum, twelve months after date; one for the like sum, eighteen months after date; one for the like sum, two years after date; one for the like sum two years and six months after date; one for the like sum, three years after date; one for the like sum, three years and six months after date; one for the like sum, four years after date; one for the like sum, four years and six months after date; and one for the like sum, five years after date. And being desirous to secure the prompt payment of said promissory notes hath made this his deed of trust on the lot of ground above described.

218 Now, if, when the said promissory notes become due and payable as aforesaid, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if, on the day or days when the said promissory notes hereinbefore described become due and payable, the same or either of them or any part of either of them shall become due and remain in arrear and unpaid, this deed shall remain in force; and the said party of the second part, or the survivor of them, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court-house door of St. Louis County, on Fourth street, in the city of St. Louis, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed and published in the city of St. Louis, and upon such sale, shall execute and deliver a deed, in fee simple, of the property sold, to the purchaser or purchasers thereof, and receive the proceeds of said sale; out of which they shall pay—first, the costs and expenses of executing this trust, including compensation to the trustees for their services; and next, whatever may be due and owing on each and every one of said promissory notes, whether due on their face or not; the intention being, in the event of a sale of said property under this deed of trust, to pay and satisfy in full the whole of said principal note of ten thousand dollars, and so many of the small notes, which are given for interest as may be due up to the time of the sale, and interest on the same up to the day of sale, if any; and the remainder, if any, shall be paid to the said party

219 of the first part, or their legal representatives.

And the said party of the second part covenant faithfully to perform and fulfil the trust herein created.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Executed in presence of—

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
ROBERT CAMPBELL. [SEAL.]
CHARLES K. DICKSON. [SEAL.]

Signed, sealed, and delivered in presence of—
ELIZABETH LEWIS.
P. W. JOHNSTON.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this sixteenth day of June, eighteen hundred and fifty-nine, before me, the undersigned, a justice of the peace within and for the county aforesaid, came John F. Darby and Mary M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed, for the purposes therein mentioned.

And the said Mary M. Darby, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination separate and apart from her hubsand, that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Taken and certified the day and year above written.

PETER W. JOHNSTON,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office, June 16, 1859, and is truly recorded in book 219, page 527.

Witness my hand and official seal the date aforesaid.

C. KEMBLE, *Recorder.*

(Endorsed:) Satisfied, & release entered of record, June, 1866.

220 Another deed—same parties, and on same date.

This deed, made and entered into this fifteenth day of June, eighteen hundred and fifty-nine, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, Missouri, party of the first part, Robert Campbell and Charles K. Dickson, of the same city, county, and State, party of the second part, and Edward Shippin Willing, of Philadelphia, Pennsylvania, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey, and confirm, unto the said party of the second part, a certain lot or piece of ground in the city of St. Louis, in the State of Missouri, and described as follows, to wit: Beginning at a point on the western line of Fifth street, fifty-five feet from the northeast corner of block number one

hundred and sixteen, of the city of St. Louis, and running thence southwardly along the western line of Fifth street, twenty feet, to the lot occupied at present by Bazil W. Alexander; thence westwardly, by a line running directly parallel to the south line or side of Olive street, one hundred and twenty-seven and a half feet deep, to the eastern line or side of the alley running through said block number one hundred and sixteen; thence northwardly, through, by, and with the eastern line of said alley, twenty feet; thence eastwardly, by a line running directly parallel to the southern line or side of Olive street, one hundred and twenty-seven and a half feet, to the place of beginning: containing twenty feet in front on Fifth street, by one hundred and twenty-seven and a half feet westwardly, in depth; bounded east by Fifth street, on the south by a lot said to belong to B. W. Alexander, on the west by an alley, fifteen feet wide, and on the north by ground belonging
221 to John F. Darby: To have and to hold the same, with the appurtenances, to the said party of the second part, and to the survivor of them, and to the heirs and assigns of such survivor forever.

In trust, however, for the following purpose: Whereas John F. Darby hath this day made his eleven certain promissory notes, all bearing even date herewith, and all drawn in favor of Edward Shippin Willing, negotiable and payable at the Bank of Commerce, in the city of Philadelphia: one for the sum of ten thousand dollars, payable five years after date; one for five hundred dollars, payable six months after date; one for the like sum, twelve months after date; one for the like sum, eighteen months after date; one for the like sum, two years after date; one for the like sum, two years and six months after date; one for the like sum, three years after date; one for the like sum, three years and six months after date; and one for the like sum, four years after date; one for the like sum, four years and six months after date; and one for the like sum, five years after date; and, being desirous to secure the prompt payment of said promissory notes, hath made this his deed of trust on the lot of ground above described.

Now, if, when the said promissory notes become due and payable as aforesaid, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if, on the day or days when the said promissory notes hereinbefore described become due and payable, the same or either of them, or any part of either of them, shall become due, then and in that case, *this*, if they remain unpaid, this deed shall remain in force; and the said party of the second part, or the survivor of them, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court-house door of St. Louis County, on Fourth street, in the city of St. Louis, for cash, first
222 giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed and published in the city of St. Louis, and upon such sale shall execute and deliver a deed, in fee-simple, of the property sold, to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which they shall pay—first, the cost and expense of executing this trust, including compensation to the trustees for their services; and next, whatever may be due and owing on each and every one of said promissory notes, whether due on their face or not. The intention being that, in the event of a sale of said property, the whole of said promissory notes due up to the time of the sale, and the principal note of ten thousand dollars, and all interest due on said matured notes, which

are for interest on the principal note, shall be fully paid; and the remainder, if any, shall be paid to the said party of the first part or their legal representatives.

And the said party of the second part covenant faithfully to perform and fulfil the trust herein created.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Executed in presence of—

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
ROBERT CAMPBELL. [SEAL.]
CHARLES K. DICKSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
ELIZABETH LEWIS.
P. W. JOHNSTON.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this sixteenth day of June, eighteen hundred and fifty-nine, before me, the undersigned, a justice of the peace in and for said county of St. Louis, came John F. Darby and Mary M., his wife, who are personally known to me to be the same persons whose
223 names are subscribed to the foregoing instrument of writing, as party thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

And she, the said Mary M. Darby, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Taken and certified the day and year above written.

PETER W. JOHNSTON,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office, June 16th, 1859, and is truly recorded in book No. 224, page 187.

Witness my hand and official seal, the date last aforesaid.

[SEAL.] C. KEEMLE, *Recorder.*

(Endorsed:) "Satisfied, and release entered of record June 1866."

J. F. Darby and wife to Campbell & Dickson.

Another deed—same parties, and on same date.

This deed, made and entered into this fifteenth day of June, eighteen hundred and fifty-nine, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, Missouri, party of the first part, Robert Campbell and Charles K. Dickson of the same city, county, and State, party of the second part, and Edward Shippen Willing of Philadelphia, Pennsylvania, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and

trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey and confirm unto the said party of the second part, a certain
224 lot or piece of ground, in the city of St. Louis, in the State of Missouri, and described as follows: Being in block number one hundred and sixteen, (116,) of the city of St. Louis, to wit, beginning at a *part* on the western line of Fifth street, thirty-five feet southwardly from the northeast corner of said block number one hundred and sixteen, and running thence southwardly on the western line or side of Fifth street, twenty feet; thence westwardly, by a line running directly parallel to the southern line or side of Olive street, one hundred and twenty-seven and a half feet to the eastern line of the alley through said block; thence northwardly, twenty feet; thence eastwardly, by a line directly parallel to the southern line of Olive street, one hundred and twenty-seven and a half feet, to the place of beginning: said lot containing twenty feet in front on Fifth street, by one hundred and twenty seven and a half feet deep to an alley; bounded on the east by Fifth street, on the south by land of John F. Darby, on the west by an alley, and on the north by land belonging to said John F. Darby: To have and to hold the same, with the appurtenances, to the said party of the second part, and to the survivor of them, and to the heirs and assigns of such survivor forever.

In trust, however, for the following purpose: Whereas John F. Darby hath this day made his certain eleven promissory notes, all bearing even date herewith, and all drawn in favor of Edward Shippin Willing, negotiable and payable at the Bank of Commerce, of the city of Philadelphia: one for the sum of ten thousand dollars, payable five years after date; one for the sum of five hundred dollars, payable six months after date; one for the like sum, twelve months after date; one for the like sum, eighteen months after date; one for the like sum, two years after date; one for the like sum, two years and six months after date; one for
225 the like sum, three years after date; one for the like sum, three years and six months after date; one for the like sum, four years after date; one for the like sum, four years after date and six months; one for the like sum, five years after date; and, being desirous of securing the prompt payment of said promissory notes, hath made this his deed of trust on the lot of ground above described.

Now, if, when the said promissory notes become due and payable as aforesaid, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then this deed shall be void, and the property hereinbefore conveyed shall be released the cost of said party of the first part; but if, on the day or days when the said promissory notes hereinbefore described become due and payable, the same, or *the* either of them, or any part of either of them, shall become due and remain in arrear and unpaid, this deed shall remain in force; and the said party of the second part, or the survivor of them, may proceed to sell the property hereinbefore described, at public vendue, to the highest bidder, at the court-house door of St. Louis County, on Fourth street, in the city of St. Louis, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed and published in the city of St. Louis; and upon such sale, shall execute and deliver a deed, in fee simple, of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which they shall pay—first, the costs and expenses of executing this trust, including compensation to the trustees for their services; and next, whatever may be due and owing on

each and every one of said promissory notes whether due on their face or not; the intention being, in the event of a sale of said property, under this deed of trust, to pay and satisfy in full, the whole of said
226 principal note of ten thousand dollars, and so many of the smaller notes, which are given for interest, as may be due up to the time of the sale, and interest on the same up to the day of the sale, if any; and the remainder, if any, shall be paid to the said party of the first part, or their legal representatives. And the said party of the second part covenant faithfully to perform and fulfil the trust herein created.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Executed in presence of—

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
ROBERT CAMPBELL. [SEAL.]
CHARLES K. DICKSON. [SEAL.]

Signed, sealed, and delivered in presence of—
ELIZABETH LEWIS, &
P. W. JOHNSTON.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this sixteenth day of June, eighteen hundred and fifty-nine, before me, the undersigned, a justice of the peace within and for the county aforesaid, came John F. Darby and Mary M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledge the same to be their act and deed for the purposes therein mentioned.

And the said Mary M. Darby, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Taken and certified, the day and year above written.

[SEAL.] PETER W. JOHNSTON,
Justice of the Peace.

Filed and recorded, June 16th, 1859.

C. KEEMLE, *Recorder.*

227 *J. F. Darby & wife to Henderson's trustees.*

Deed of Darby and wife to A. H. Henderson's trustee, dated June 19th, 1866.

[U. S. stamp $31 00. J. F. D. 6, 19, '66.]

This deed, made and entered into this nineteenth day of June, eighteen hundred and sixty-six, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, party of the first part, and Charles K. Dickson, of the same city, county, and State, party of the second part, and George E. O. Hockaday and James S. Henderson, trustees of the estate of Alexander H. Henderson, deceased, of Callaway County, in the State of Missouri, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, alien, convey, and confirm unto the said party of the second part a certain lot, piece, or parcel of ground situated in block No. 116, in the city of St. Louis, in the State of Missouri, and described as follows: Beginning at a point on the west side of Fifth street, twenty-seven feet five and a half inches, more or less, southwardly from the northeast corner of said block No. 116, and running eastwardly directly on a line parallel with the southern line or side of Olive street to the centre of the wall dividing the northern or corner building from the middle building of the three marble stores situated on the southeast corner of said block No. 116, which said wall is the partition wall dividing said northern building or corner store from said middle building or store, and which said partition wall is the southern wall or boundary of said northern building or corner store, and the northern wall of said middle store or building; and running thence westwardly directly in the centre of said partition
228 wall and on a line directly parallel with the southern line or side of Olive street to the east line or side of the alley running north and south through said block No. 116, one hundred and twenty-seven feet six inches; thence southwardly, by and with the eastern line or side of said alley, twenty-three feet five and one-half inches, to the centre of the wall dividing said middle store or building from the southern store or building, and which said wall is the southern boundary wall of said middle building and the partition wall between the said middle and southern store, and running thence directly in the centre of said last-mentioned wall eastwardly and on a line directly parallel with the southern line or side of Olive street, one hundred and twenty-seven feet six inches, to the western line or side of Fifth street; thence northwardly, by and with the western line or side of Fifth street, twenty-three feet five and a half inches, to the place of beginning, on Fifth street; bounded on the east by Fifth street, on the north by land of John F. Darby, on the west by said alley, and on the south by land of John F. Darby: To have and to hold the same, together with the appurtenances, to the said party of the second part, and to his heirs and assigns forever.

In trust, however, for the following purpose: Whereas John F. Darby hath this day made and executed his seven several promissory notes, all bearing even date herewith, negotiable and payable without defalcation or discount, and all in favor of George E. O. Hockaday and James S. Henderson, trustees of the estate of Alexander H. Henderson, deceased: one principal note for the sum of twenty-five thousand dollars, payable three years after date; one note for eleven hundred and twenty-five dollars, payable six months after date; one for the like sum, twelve months after date; one for the like sum, payable eighteen months after date; one for the like sum, payable twenty-four months after date;
229 one for the like sum, payable thirty months after date; and one for the like sum, payable thirty-six months after date—the said last-mentioned notes being interest notes for the interest payable semi-annually on said principal sum. And he, the said John F. Darby, being desirous to secure the prompt payment of said notes, hath made this his deed of trust on the property hereinbefore described.

Now, therefore, if, when the said several promissory notes hereinbefore described become due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, (each and every one of said promissory notes bearing interest after maturity, if not

paid when due, at the rate of nine per centum per annum,) then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if, when the said promissory notes hereinbefore described become due and payable, the same or either one of them shall be and remain in arrear and unpaid, then this deed shall remain in force, and the said party of the second part, or, in the event of his death or absence from the State, the sheriff of the county of St. Louis for the time being, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the east front door of the court-house in St. Louis, for cash, first giving thirty days' public notice of the time, terms, and place of said sale and of the property to be sold, by advertisement in some newspaper printed in the English language in St. Louis; and, upon such sale, shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which he shall pay—first, the costs and expenses of this trust, and next, whatever may be due of both principal on all of said promissory notes and interest; and the remainder, if any, shall be paid
230 to the said John F. Darby or his legal representatives. And the said party of the second part covenant faithfully to perform and fulfil the trust herein created.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
CHARLES K. DICKSON. [SEAL.]

Executed in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this nineteenth day of June, A. D. eighteen hundred and sixty-six, before me, the undersigned, a notary public within and for the county and State aforesaid, came John F. Darby and Mary M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purpose therein mentioned.

And the said Mary M. Darby, wife of the said John F. Darby, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] JOSEPH L. PAPIN,
Notary Public St. Louis Co., Mo.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder in and for said county, certify that the foregoing deed was, on the 19th day of June, 1866, filed for record
231 in my office, and is truly recorded in book 319, page 240. Given under my hand and official seal the day and year last aforesaid.

[SEAL.] JULIUS CONRAD, *Recorder.*

(Endorsed:) "Released October 28th, '68. Julius Conrad, recorder."

Darby & wife to W. H. Darby's trustee.

Deed of trust. John F. Darby and wife to C. K. Dickson, trustee of Walter H. Darby, dated May 5th, 1866.

[U. S. stamp, $17 00. J. F. D., 5, 5, '66.]

This deed, made and entered into this fifth day of May, eighteen hundred and sixty-six, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, party of the first part, and Charles K. Dickson, of the same city, county, and State, party of the second part, and Walter H. Darby, of the same city, county and State, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, alien, convey, and confirm unto the said party of the second part, a certain lot or piece of ground, situated, lying, and being in the city of St. Louis, in block number one hundred and sixteen of said city, (No. 116,) and described as follows, to wit: Beginning on the west side of Fifth street, fifty feet south of the south line of Olive street, and at a point which would be directly in the centre of the north wall of the south building of the three marble buildings erected by John F. Darby, at the southwest corner of Fifth and Olive streets, in the city of St. Louis, which said north wall is the dividing or partition wall between the southern store and the middle building or store, and running
232 thence westwardly and by a line parallel to the south line or side of Olive street, directly to the centre of said partition wall and on a line directly parallel with the southern line or side of Olive street, in the centre of said partition wall, one hundred and twenty-seven feet six inches, to the east side of the alley running through said block No. 116; thence southwardly, by and with the eastern line of said alley, twenty-five feet, to the line of the lot of ground said to belong to Basil W. Alexander; thence eastwardly, by and with the northern line of said Basil W. Alexander's lot, and on a line running eastwardly and directly parallel with the south line of Olive street, one hundred and twenty-seven feet six inches, to Fifth street; thence northwardly, twenty-five feet, along the west line of Fifth street, more or less, to the place of beginning. Said lot of ground containing a front on Fifth street of twenty-five feet by one hundred and twenty-seven feet six inches, westwardly, to an alley fifteen feet wide, on which is erected a five-story marble front building, bounded on the east by Fifth street, on the north by property belonging to John F. Darby, on the west by an alley, and on the south by a lot of ground said to belong to Basil W. Alexander: To have and to hold the same, together with the appurtenances, to the said party of the second part, and to his heirs, and assigns, forever.

In trust, however, for the following purpose: Whereas the said John F. Darby did, on this day, make and execute his seven several promissory notes, all bearing even date herewith, and all in favor of the said Walter H. Darby: one of said promissory notes, being the principal note, for the sum of twenty-five thousand dollars, payable three years after date; one other, interest note, being for the sum of eleven hundred and twenty-five dollars, payable six months after date; one for the like
233 sum, payable twelve months after date; one for the like sum, payable eighteen months after date; one for the like sum, payable two years after date; one for the like sum, payable two years and

six months after date; one for the like sum, payable three years after date; all of which said notes being negotiable and payable without defalcation or discount, and all bearing interest after maturity, if not paid when due, at the rate of nine per cent. per annum. And he, the said John F. Darby, being desirous to secure the prompt payment of the said promissory notes, hath made this his deed of trust on said lot of ground.

Now, therefore, if, when the said several promissory notes above mentioned become due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then this deed shall be void, and the property hereinbefore conveyed shall be released, at the cost of the said party of the first part; but if the said promissory notes, or any one of them, shall become due and remain unpaid, then this deed shall remain in force; and the said party of the second part, or in case of his death, sickness, absence from the State, or inability to act, then, and in that case, the sheriff of the county of St. Louis for the time being, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the east front door of the court-house of St. Louis County, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed in English, in the city of St. Louis, and upon such sale shall execute and deliver a deed in fee simple of the property sold, to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which he shall pay—first, the costs and expenses of this trust, and next, the whole amount of said principal note, and all the interest due thereon up to the time of the sale; and, in case it shall
234 so happen that any one of the interest notes above mentioned shall become due and remain unpaid, then, and in that case, the holder of said promissory notes may proceed to sell said property to satisfy and pay the whole of said principal note, and all interest due thereon up to the day of said sale, if he, said holder, shall think proper to do so, and not otherwise. Said John F. Darby covenants also to keep said building insured during the whole time this deed of trust has to run, to the extent of twenty thousand dollars, and to assign the policies of insurance to the said party of the second part for the benefit of the holder of said promissory notes, as a further security for the same. And after the payment in full of said principal sum, interest, and costs from the property, the remainder, if any, shall be paid to the said John F Darby, or his legal representatives.

And the said party of the second part covenants faithfully to perform and fulfil the trust herein created.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
WALTER H. DARBY. [SEAL.]
CHARLES K. DICKSON. [SEAL.]

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this fourteenth day of May, A. D. eighteen hundred and sixty-six, before me, the undersigned, a notary public within and for the county and State aforesaid, came John F. Darby and Mary M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purpose therein mentioned.

235 And the said Mary M. Darby, wife of the said John F. Darby,

having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] JOSEPH L. PAPIN,
Notary Public for St. Louis County, Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office May 15, 1866, and is truly recorded in book 311, page 542.

Witness my hand and official seal the date aforesaid.

JULIUS CONRAD, [SEAL.]
Recorder.

(Endorsed:) "Released Oct. 28, '68." Julius Conrad, recorder.

Darby & wife to J. H. Britton's trustee.

Deed of J. F. Darby and wife to James H. Britton's tr., dated January 2nd, A. D. 1868.

This deed, made this second day of January, in the year of our Lord eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, of the one part, Charles K. Dickson, of the same city, county, and State, of the second part, and James H. Britton, of the same city, county, and State, of the third part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, to them cash in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and other the consideration hereinafter mentioned and expressed,
236 they, the said party of the first part, have this day granted, aliened, transferred, conveyed, and confirmed, and by these presents do grant, alien, transfer, convey, and confirm unto him, the said Charles K. Dickson, party of the second part, and to his heirs and assigns, a certain lot, piece, or parcel of ground situate, lying, and being in the city of St. Louis, in the State of Missouri, in block number one hundred and sixteen, (No. 116,) of said city, and described as follows, to-wit: Beginning at the northeast corner of said block at the intersection of Olive and Fifth streets, and running thence southwardly on the western line or edge of Fifth street, twenty-eight feet, more or less, to the centre of the southern wall of the corner building on the southwest corner of Olive and Fifth streets, said southern wall being the partition or division between the said corner building and the next building adjoining it on the south; thence westwardly, by a line running directly in the centre of said southern or partition wall dividing the corner building from the next building adjoining it on the south, one hundred and twenty-seven feet six inches, to the eastern line or side of the alley running through said block; thence northwardly, by and with the eastern line of said alley, twenty-eight feet, more or less, to the southern line or side of Olive street; thence eastwardly, by and with the southern line of Olive street to the place of beginning at the intersection of the southern line of Olive street, and the western line of Fifth street; the said

lot or piece of ground being bounded on the east by Fifth street, on the south by land belonging to John F. Darby, on the west by an alley fifteen feet wide, and on the north by Olive street, on which said lot of ground is a large five-story marble building: To have and to hold the said lot or piece of ground above described unto him, the said Charles K. Dickson, party of the second part, and to his heirs and assigns forever.

237 The above deed is, nevertheless, made upon this condition, that is to say, the said John F. Darby did, on the day of the date hereof, make and execute his certain promissory note, bearing even date herewith, for the sum of twenty-five thousand dollars, payable sixty days after date to his own order, negotiable and payable at the National Bank of the State of Missouri, and by him, the said John F. Darby, endorsed and delivered to the said James H. Britton; and he, the said John F. Darby, being desirous to secure the payment of the said promissory note, hath made this his deed of trust on the said lot, piece of ground, above described:

Now, therefore, if, when the said promissory note herein described becomes due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then and in that case, this deed of trust shall become void and of no effect; and he, the said Charles K. Dickson, trustee as aforesaid, shall, on the reasonable request and at the proper costs of him, the said John F. Darby, reconvey the said lot or piece of ground hereinbefore described to him, the said John F. Darby, free, quit, and discharged of the incumbrance aforesaid.

But if, when said promissory note hereinbefore described becomes due and payable, the same, or any part thereof, shall remain in arrear and unpaid, it shall and may be lawful to and for the said Charles K. Dickson, trustee as aforesaid, to sell said lot or piece of ground on the premises, to the highest bidder at public auction, for cash, and receive from the purchaser at such sale the purchase-money, and to make and execute a deed for the property so sold to the purchaser, first having advertised said property in some newspaper printed in the English language for thirty days at least previous to the day of sale, by advertisement giving a description of the property so to be sold, and of the time, terms, and place of sale; and out of the proceeds arising from said sale, he, the said Charles K. Dickson, trustee as aforesaid, shall pay—first, the

238 expenses of executing this trust, and next, whatever shall be due and owing on said promissory note; and the balance, if any, shall be paid over to him, the said John F. Darby; it being well understood between the parties to this deed that there now are existing encumbrances on the said lot or piece of ground hereinbefore described.

In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written in this deed.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
CHARLES K. DICKSON. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that John F. Darby and Mary M. Darby, his wife, who are personally known to the undersigned, a notary public within and for the county and State aforesaid, to be the persons whose names are subscribed to the within deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same

as their voluntary act and deed for the uses and purposes therein contained.

And the said Mary M. Darby, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this second day of January, A. D. eighteen hundred and sixty-eight.

[SEAL.] JOSEPH L. PAPIN,
Notary Public St. Louis, Mo.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office January
239 2d, 1868, and is truly recorded in book 354, p. 119.

Witness my hand and official seal the date aforesaid.

[SEAL.] JULIUS CONRAD, *Recorder.*

(Endorsed:) "Released October 28th, 1868." Julius Conrad, recorder.

Darby & wife to J. H. Britton's trustee.

Deed of John F. Darby and wife to Charles K. Dickson, trustee of James H. Britton, dated February 25th, 1868.

[U. S. stamp, $50 00. J. F. D. 2, 25, '68.]

This deed, made and entered into this twenty-fifth day of February, eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, party of the first part, and Charles K. Dickson, of the city and county of St. Louis, in the State of Missouri, party of the second part, and James H. Britton, of the city and county of St. Louis, in the State of Missouri, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, alien, convey, and confirm unto the said party of the second part, and to his heirs and assigns, a certain lot or parcel of ground situated, lying, and being in block number one hundred and sixteen, (No. 116,) in the city of St. Louis, containing seventy-five feet in front on Fifth street, by one hundred and twenty-seven feet six inches, more or less, in depth, to the alley, bounded on the east by Fifth street, on the north by Olive street, on the West by the alley, and on the south by property formerly owned by Bernard Pratte, now deceased, being the same property conveyed by P. Dexter Tiffany and wife to John F. Darby, by deed made the sixteenth day of January, in the year of our Lord eighteen hundred
240 and forty-nine, duly entered of record in the recorder's office of St. Louis County, in book W No. 4, pages 479 & '80, on which said lot of ground there has been erected a marble block of buildings, containing three stores; it being well understood between the parties to this deed that there already an incumbrance on said property above described: To have and to hold the same, together with the appurtenances, to the said party of the second part, and to his heirs and assigns forever.

In trust, however, for the following purpose: Whereas John F. Darby has this day made and executed his two several promissory notes, each for the sum of twenty-five thousand dollars, and both bearing even date herewith, payable to his own order, and by him endorsed, payable six months after date, for value received, negotiable and payable, without defalcation or discount, at the National Bank of the State of Missouri, and with interest on the same after maturity, if not paid when due, at the rate of ten per centum per annum till paid; which said two promissory notes above described, so made and endorsed by him, the said John F. Darby, have this day been passed to and delivered by the maker of the same to James H. Britton, for a valuable consideration; and he, the said John F. Darby, being desirous to secure the prompt payment of the said promissory notes, hath made his deed of trust on the property hereinbefore described.

Now, therefore, if, when the two promissory notes hereinbefore described, endorsed, and delivered as aforesaid, become due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, and all interest, if any shall have accrued, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if, when the said promissory above described become due and payable,
241 the same or any part thereof shall remain in arrear and unpaid, then this deed shall remain in force; and the said party of the second part (or in case of his death the sheriff of the county of St. Louis for the time being) may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the front of the building on Fifth street, for cash, first giving thirty days' public notice of the time, terms, and place of said sale and of the property to be sold, by advertisement in some newspaper printed in the English language in St. Louis, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which he shall pay—first, the costs and expenses of this trust, and next, whatever may be due on said promissory notes; and the remainder, if any, shall be paid to the said John F. Darby, or his legal representatives. And the said party of the second part covenant faithfully to perform and fulfil the trust herein created.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
CHA'S K. DICKSON. [SEAL.]

Executed in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this twenty-fifth day of February, A. D. eighteen hundred and sixty-eight, before me, the undersigned, a notary public within and for the county and State aforesaid, came John F. Darby and Mary M. Darby, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowl-
242 edged the same to be their act and deed for the purpose therein mentioned.

And she, the said Mary M. Darby, having been by me first made acquainted with the contents of said deed, acknowledged, on an examina-

tion separate and apart from her said husband, that she executed the same freely, voluntarily, and without compulsion or undue influence of her said husband, and relinquished all her interest, whether of dower or otherwise, in the real estate therein mentioned, freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] HERMAN A. HAENSSLER,
Notary Public St. Louis Co., Mo.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing instrument was filed for record in my office, Feb'y 27, 1868, and is truly recorded in my office in book 347, p. 534.

Witness my hand and official seal, date aforesaid.

JULIUS CONRAD, *Recorder.* [SEAL.]

(Endorsed:) "Released Oct. 28, '68. Julius Conrad, recorder."

J. F. Darby & wife to W. F. Ferguson's trustee.

Deed of John F. Darby and wife to Francis Vallé, trustee of William F. Ferguson, dated January 21st, A. D. 1868.

[U. S. stamp $10 00. J. F. D. 21, 1, '68.]

This deed, made and entered into this twenty-first day of January, eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, party of the first part, and Francis Vallé, of the city and county of St. Louis, in the State of Missouri, party of the second part, and William F. Ferguson, of the city and county of St. Louis,
243 in the State of Missouri, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, alien, transfer, and convey unto the said party of the second part, and to his heirs and assigns, a certain lot or piece of ground situate, lying, and being in the city of St. Louis, in the State of Missouri, in block number thirty-two, (No. 32,) of said city of St. Louis, containing twenty-two feet six inches, more or less, in front, on First or Main street, by one hundred and fifty feet, more or less, westwardly in depth, to an alley twenty feet wide, described as follows: Beginning on the west side of Main street, directly on the north line of the lot of ground sold by Paul M. Gratiot and wife to Bernard Pratte, on the sixteenth day of May, eighteen hundred and thirty-two, and running thence northwardly along the western line of Main street, twenty-two feet six inches, more or less, to the south line of the lot of ground formerly belonging to Daniel D. Page, in said block number thirty-two, (No. 32,) and which formerly belonged to Richard Milligan; thence westwardly, by and with the southern line of said Daniel D. Page's lot, one hundred and fifty feet, to an alley twenty feet wide; thence southwardly, by and with the eastern line of said alley, twenty-two feet six inches, more or less, to the northern line of the lot of ground sold by Paul M. Gratiot and wife, as aforesaid, to Bernard Pratte; thence eastwardly by and with the said northern

line of the lot of ground so sold to Bernard Pratte, one hundred and fifty feet, more or less, to the place of beginning, on First or Main street; bounded on the east by First or Main street, on the north by a lot formerly belonging to Richard Milligan, and said to have been con-
244 veyed to Daniel D. Page, on the west by an alley, on the south by a lot formerly belonging to the estate of Bernard Pratte, deceased; it being well understood between the parties to this deed that there now an incumbrance on said lot of ground above-described: To have and to hold the same, together with the appurtenances, to the said party of the second part, and to his heirs and assigns, forever.

In trust, however, for the following purpose: Whereas John F. Darby did, on the first day of September, in the year of our Lord eighteen hundred and sixty-seven, *did* make and execute his certain promissory note for the sum of ten thousand dollars, payable eighteen months after date, and with interest on the same at the rate of eight per centum per annum, which interest is payable semi-annually from said date; and he, the said John F. Darby, did also make his certain other promissory note, bearing date the first day of January, 1868, for the sum of ten thousand dollars, payable one year after date, and with interest on the same at the rate of eight per centum per annum, which interest is payable semi-annually from the date of said promissory note, both of said promissory notes being given to and drawn in favor of said William F. Ferguson, who is the holder of the same:

Now, therefore, if, when said promissory notes hereinbefore described become due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, and all interest due thereon, as the same becomes due, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if, when the said promissory notes hereinbefore described becomes due and payable, the same, or either of them, or any part of either of said promissory notes, or any interest due thereon as
245 aforesaid, shall become due, and remain in arrear and unpaid, then this deed shall remain in force; and the said party of the second part, or, in the event of his death, the sheriff of the county of St. Louis for the time being, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court-house door of St. Louis County, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed in St. Louis, in the English language, and upon such sale, shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which said trustees shall pay—first, the costs and expenses of this trust; and next, whatever may be due on both of said promissory notes, and all interest due thereon; and the remainder, if any, shall be paid to the said John F. Darby, or his legal representatives.

And the said party of the second part covenants faithfully to perform and fulfil the trust herein created.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
FRANCIS VALLÉ. [SEAL.]
WILLIAM F. FERGUSON. [SEAL.]

Executed in presence of—

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this twenty-first day of January, A. D. eighteen hundred and sixty-eight, before me, the undersigned, a notary public in and for the county and State aforesaid, came John F. Darby and Mary M. Darby, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the
246 same to be their act and deed, for the purpose therein mentioned.

And the said Mary M. Darby, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In witness whereof I have hereunto set my hand and notarial seal the day and year last above written.

[SEAL.] JOEL G. HARPER,
Notary Public in and for St. Louis County, Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing deed was filed for record in my office Jan. 22, 1868, and is truly recorded in book 352, page 247.

Witness my hand and official seal the date aforesaid.

[SEAL.] JULIUS CONRAD, *Recorder.*

(Endorsed:) "Released May 18, '68. Julius Conrad, recorder."

J. F. Darby & wife to J. H. Lucas.

A deed from John F. Darby and wife to James H. Lucas, dated April 24th, A. D. 1869.

(This deed is copied in this transcript, page 6 to page 10, inclusive, and marked Exhibit A, referred to in said bill of complaint, &c., &c.)

J. F. Darby & wife to Moss Prewitt.

Deed of John F. Darby to Moss Prewitt, dated September 19th, A. D. 1868. (Case No. 760.)

[U. S. stamp $9 00. J. F. D. Sept. 19, 1868.]

This mortgage deed, made this nineteenth day of September, in the year of our Lord eighteen hundred and sixty-eight, by and be-
247 tween John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, of the one part, and Moss Prewitt, of the county of Boone, in the State of Missouri, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to them, cash in hand, well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, they, the said party of the first part, have granted, aliened, transferred, conveyed, and confirmed, and by these presents do grant, alien, transfer,

convey and confirm unto him, the said Moss Prewett, and to his heirs and assigns, a certain lot or piece of ground situated, lying, and being in the city of St. Louis, in block (No. 10,) ten, of said city, and described as follows, to wit: Beginning at a point on the east side of Main street, nineteen feet six inches southwardly from the south side or line of Olive street, which point is the centre or middle of the south wall of the corner building situated on the northwest corner of said block number ten, (No. 10,) and running thence southwardly along the eastern line or side of Main street twenty feet, more or less, to the centre or middle of the wall of the second building on Main street south of Olive street in said block (No. 10,) ten, being the south wall of said second building; thence eastwardly, by a line running directly in the middle or centre of said southern wall of the said second *street* or building, and on a line directly parallel with the southern line of said Olive street, ninety feet, more or less, to the western side or line of Commercial street; thence northwardly, by and with the western line of Commercial street, twenty feet, more or less, to the centre or middle of the southern wall of the corner store on Main street in block number ten, (10,) which corner store is bounded north by Olive street; thence by a line directly in the
248 centre or middle of said southern wall of the corner building and on a line directly parallel to the southern line of Olive street, ninety feet, more or less, to the place of beginning on Main str.; bounded on the west by Main street, on the south by land belonging to John F. Darby, and leased to William F. Christy and Robert K. Woods, on the east by Commercial street, and on the north by land belonging to John F. Darby: To have and to hold the said lot or piece or pieces of ground above described, unto him, the said Moss Prewett, and to his heirs and assigns, together with all the rights, privileges, and appurtenances thereto belonging, or in any wise appertaining.

This deed is, nevertheless, made upon this express condition, that is to say, the said John F. Darby is justly indebted to Moss Prewett in a promissory note for the sum of eight thousand dollars bearing date the twentieth day of June, in the year of our Lord eighteen hundred and sixty-six, payable three years after date; also, one other promissory note bearing date the twentieth day of June, in the year of our Lord eighteen hundred and sixty-six, for the sum of three hundred and twenty dollars, payable two years and six months after date; and one for the like sum, of same date, payable three years after date; all of said notes being made by John F. Darby in favor of Moss Prewitt, and he, the said John F. Darby, being desirous to secure the prompt payment of said promissory notes, hath made this his mortgage deed on the lots of ground hereinbefore described, and it being well understood between the parties to this deed, that there is an incumbrance on said lot of ground already, previous to this incumbrance: Now, therefore, when the said promissory notes hereinbefore specified become due and payable, he, the said John F. Darby, or any person for him, shall well
249 and truly pay up the same, then, in that case, this mortgage deed shall become void and of no effect, and the property hereinbefore described shall be released and reconveyed to him, the said John F. Darby, free, quit, and discharged from the encumbrance hereby created; but if, on the day or days when the said promissory notes hereinbefore described become due and payable, the same or either of them shall be in arrear and unpaid, then, and in that case, it shall and may be lawful to and for the said Moss Prewett to file his bill to foreclose the equity of redemption and have said mortgaged premises sold to pay and satisfy the amount due according to law.

In witness whereof the said John F. Darby and Mary M. Darby, his wife, have hereunto set their hands and seals the day and year first above written in this deed.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that John F. Darby and Mary M. Darby, his wife, who are personally known to the undersigned, a notary public within and for said county, to be the persons whose names are subscribed to the foregoing deed as parties thereto, this day appeared before me, and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained.

And the said Mary M. Darby, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed
250 my notarial seal this twenty-first day of September, A. D. eighteen hundred and sixty-eight.

[SEAL.] JOSEPH L. PAPIN,
Notary Public St. Louis County, Mo.

Filed and recorded September 25th, 1868.

JULIUS CONRAD, *Recorder.*

[U. S. stamp, 5 c., W. C. K., Jan. 25,'71.]

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a true and complete copy of a mortgage executed by John F. Darby and wife to Moss Prewett; of the certificate of acknowledgment, and of the date of filing and recording thereof, as fully as the same remains of record in my office in book 371, page 17.

Witness my hand and official seal this the 25th day of January, A. D. 1871.

W. C. KENNETT, *Recorder.*

J. F. Darby & wife to C. F. Darby's trustee.

Deed of John F. Darby and wife to Francis Vallé, trustee of Caswell F. Darby, dated December 17th, A. D. 1868.

[U. S. stamp $8 00. J. F. D. 12, 17, '67.]

This deed, made this seventeenth day of December, in the year of our Lord eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, of the one part, Francis Vallé, of the same city, county, and State, of the second part, and Caswell F. Darby, of the same city, county, and State, of the third part, witnesseth:

That the said party of the first part, for and in consideration of the

sum of one dollar to them, cash in hand, well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and other the consideration hereinafter mentioned and expressed, they, the said party of the first part, have this day granted, aliened, transferred, conveyed, and confirmed, and by these presents do
251 grant, alien, transfer, convey, and confirm unto him, the said Francis Vallé, party of the second part, and to his heirs and assigns, a certain lot, piece, or parcel of ground, situated, lying, and being in the city of St. Louis, containing twenty feet in front on Main street, English measure, by one hundred and forty feet, French measure, westwardly in depth, be the same more or less, being the same lot of ground which was acquired by John F. Darby from John C. Abbott, by deed, bearing date December the seventeenth, eighteen hundred and thirty-five, bounded and described as follows, to wit: Beginning at the north-east corner of a lot of ground in block number twenty-nine, (No. 29,) of said city of St. Louis, conveyed by John Miller to James T. Sweringen, by deed dated the first day of June, eighteen hundred and thirty-five, and recorded in the recorder's office, in book U, page 415, of Saint Louis County, and running northwardly, on the western line of Main street twenty feet, English measure; thence westwardly, one hundred and forty feet, French measure, more or less, to the alley; thence, southwardly by the eastern line of said alley, twenty feet, English measure; thence eastwardly, one hundred and forty feet, French measure, to the place of beginning on Main street; bounded on the east by Main street, on the north by a lot formerly owned by John B. Sarpy, on the west by an alley, on the south by a lot formerly owned by James T. Sweringen: To have and to hold the said lot or piece of ground above described, unto him, the said Francis Vallé, party of the second part, and to his heirs and assigns forever.

The above deed is, nevertheless, made upon this condition, that is to say: The said John F. Darby did, on this day, make and execute his certain promissory note, bearing even date herewith, for the sum of eight thousand dollars, payable one year after date, in favor of Caswell F.
252 Darby, negotiable and payable at the National Bank of the State of Missouri, with interest on the same at the rate of ten per centum per annum; and he, the said John F. Darby, being desirous to secure the payment of the said promissory note, hath made this his deed of trust on the said lot or piece of ground above described: Now, therefore, if when the said promissory note hereinbefore described, becomes due and payable, he, the said John F. Darby, or any person for him, shall well and truly pay up the same, then, and in that case, this deed of trust shall become void and of no effect, and he, the said Francis Vallé, trustee as aforesaid, shall, on the reasonable request, and at the proper costs of him, the said John F. Darby, reconvey the said lot or piece of ground hereinbefore described, to him, the said John F. Darby, free, quit, and discharged of the incumbrance aforesaid; but, if, when the said promissory note hereinbefore described, becomes due and payable, the same or any part thereof, shall remain in arrear and unpaid, it shall and may be lawful to and for the said Francis Vallé, trustee as aforesaid, to sell said lot or piece of ground, on the premises, to the highest bidder, at public auction, for cash, and receive from the purchaser at such sale the purchase-money, and make and execute a deed for the property so sold to the purchaser, first having advertised said property in some newspaper printed in the city of St. Louis, in the English language, for thirty days at least previous to the day of sale, by advertisement, giving a description of the property to be sold, and of the time,

terms, and place of said sale, and execute a deed of the property sold to the purchaser, and receive the purchase-money, and out of the proceeds arising from said sale, he, the said Francis Vallé, trustee as aforesaid, shall pay—first, the expenses of executing this trust, and next, whatever shall be due and owing on said promissory note; and the balance, if any, shall be paid over to the said John F. Darby; it being well understood between the parties to this deed, that there is now an existing incumbrance on the said lot or piece of ground, hereinbefore described.

253

In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written in this deed.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
FRANCIS VALLÉ. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that John F. Darby and Mary M. Darby, his wife, and Francis Vallé, who are personally known to the undersigned, a notary public within and for the said county, to be the persons whose names are subscribed to the foregoing deed, as parties thereto, this day appeared before me, and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained.

And the said Mary M. Darby being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same freely and without compulsion or undue influence of her said husband, and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, this nineteenth day of December, A. D. eighteen hundred and sixty-eight.

[SEAL.] JOSEPH L. PAPIN,
Notary Public St. Louis County, Missouri.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the within instrument was filed for record in my office, June 30, 1869, and is duly recorded in book 390, page 13.

254

Witness my hand and official seal, date aforesaid.

[SEAL.] JULIUS CONRAD,
Recorder.

Darby and wife to W. F. Ferguson's trustee.

Deed of John F. Darby and wife, to Francis Vallé, trustee of William F. Ferguson, dated June 23d, A. D. 1868.

[U. S. stamp $20 00. J. F. D. 6, 23, 1868.]

This deed, made and entered into this twenty-third day of June, eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, party of the first part, and Francis Vallé, of the same city,

county, and State, party of the second part, and William F. Ferguson, of the same city, county, and State, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, alien, transfer, convey, and confirm unto the said party of the second part, and to his heirs, and assigns, a certain lot, piece, or parcel of ground, situate, lying, and being in block number ten, (No. 10,) in the city of St. Louis, and described as follows, to wit: Beginning at a point on the eastern line of Main street, nineteen feet six inches south of the southern line of Olive street, in the centre of the southern wall of the corner building in said block, which said corner building is bounded on the north by Olive street, and on the west by Main street; then by a line running
255 directly parallel to the southern line of Olive street, in the centre of said wall, eastwardly, about ninety feet, more or less, to the western line of Commercial; thence southwardly, by and with the western line of Commercial street, twenty feet; thence westwardly, by a line directly parallel to the southern line of Olive street, ninety feet, more or less, to the eastern line of Main street, to the place of beginning; said lot of ground containing a front of twenty feet on Main street, by about ninety feet, more or less, eastwardly in depth, to Commercial street; said lot of ground being bounded on the north by land belonging to John F. Darby, on the east by Commercial street, on the south by land also belonging to John F. Darby, and on the west by Main street; it being well understood between the parties to this deed that there is now existing an outstanding encumbrance on the property, on the said lot of ground hereby conveyed in this deed of conveyance: To have and to hold the same, together with the appurtenances, to the said party of the second part, and to his heirs and assigns forever.

In trust, however, for the following purpose: Whereas the said John F. Darby did heretofore make and execute his two several promissory notes, each for the sum of ten thousand dollars, both in favor of William F. Ferguson, and both negotiable and payable without defalcation or discount; one bearing date the first day of January, in the year of our Lord eighteen hundred and sixty-eight, payable one year after date, and the other bearing date the first day of September, in the year of our Lord eighteen hundred and sixty-seven, payable eighteen months after date—both of said promissory notes bearing interest from date, at the rate of eight per annum, which interest is payable semi-annually, from the date of said promissory notes; and he, the said John F. Darby, being desirous to secure the prompt payment of both of said
256 promissory notes, and the interest due thereon, as the same becomes due and payable, hath made this, his deed of trust, on the said lot or piece of ground hereinbefore described:

Now, therefore, if he, the said John F. Darby, shall well and truly pay up the two promissory notes hereinbefore described, and the accruing interest due thereon, as the same becomes due and payable, according to the tenor and effect thereof, then this deed shall be void, and the property hereinbefore conveyed, shall be released at the cost of the said party of the first part; but if, when the said promissory notes become due and payable, the same or any part thereof, or any interest due thereon, shall become due and payable, and shall remain in arrear and unpaid, then this deed shall remain in force; and the said party of the second part, or in case of his absence or inability to act, the sheriff of the county of St. Louis for the time being, may proceed to sell the

property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court-house door of St. Louis County, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed in the English language, in St. Louis, and upon such sale shall execute and deliver a deed in fee simple, of the property sold, to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which he shall pay—first, the cost and expenses of this trust, and next, whatever may be due on both of said promissory notes of both principal and interest; and the remainder, if any, shall be paid to the said party of the first part, or his legal representatives.

And the said party of the second part covenants faithfully to perform and fulfil the trust therein created.

In witness whereof the said party of the first part have here-
257 unto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
FRANCIS VALLÉ. [SEAL.]

Executed in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this twenty-fourth day of June, A. D. eighteen hundred and sixty-eight, before me, the undersigned, a notary public within and for the county and State aforesaid, came John F. Darby and Mary M. Darby, his wife, who are both personally known to me, to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed for the purpose therein mentioned.

And she, the said Mary M. Darby, having been by me first made acquainted with the contents of said deed, acknowledged, on an examination, separate and apart from her said husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely, voluntarily, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] HERMAN A. HAENSSLER,
Notary Public St. Louis Co., Mo.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing deed was filed for record in my office, July 2, 1868, and is truly recorded in book 361, page 423.

Witness my hand and official seal, date aforesaid.

[SEAL.] JULIUS CONRAD, *Recorder.*

258 *J. F. Darby & wife to W. Weightman's trustee.*

Deed of trust of John F. Darby and wife to William Weightman's trustee, dated January 24th, A. D. 1868.

[U. S. rev. stamp, $36 50. J. F. D., Jan'y 24, '68.]

This deed, made and entered into this twenty-fourth day of January, eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the

State of Missouri, party of the first part, and William Nisbet and Henry A. Nisbet, of the city and county of St. Louis, in the State of Missouri, party of the second part, and William Weightman, of Philadelphia, in the State of Pennsylvania, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey and confirm unto said party of the second part, and to their heirs and assigns, a certain lot, piece, or parcel of ground, situate, lying, and being in block number ten, (10,) of the city of St. Louis, and described as follows, to wit: Beginning at the intersection of Olive and *Pine* street, at the northwest corner of said block number ten, (No. 10,) and running thence southwardly along the eastern line or side of First or Main street, twenty feet, more or less, to the centre of the wall dividing the first or corner building on the south side of Olive street and east of Main or First street, from the building next to said corner building and adjoining said corner building on the south; thence eastwardly, by a line running directly in the centre of said partition wall, dividing said first and second buildings and parallel to the south line or side of Olive street, one hundred feet, more or less, to the western line of
259 Commercial street; thence northwardly, by and with the western line or side of Commercial street, to the southern line or side of Olive street; thence westwardly, by and with the southern line or side of Olive street, one hundred feet, more or less, to the place of beginning; containing twenty feet front, more or less, on First or Main street, by about one hundred feet, more or less, eastwardly in depth; bounded on the west by Main street, on the south by land still belonging to said John F. Darby, on the east by Commercial street, and on the north by Olive street: To have and to hold the same, with the appurtenances thereto belonging, to the said party of the second part, and to their successors hereinafter designated, and to the assigns of them and their successors forever.

In trust, however, for the following purpose: Whereas John F. Darby, did, on the day of the date of this present deed of trust, make and execute his eleven promissory notes, all bearing even date with said deed of trust, and all in favor of said William Weightman: one for the sum of eleven hundred and twenty-five dollars, payable six months after date; one for the like sum, payable twelve months after date; one for the like sum, payable eighteen months after date; one for the like sum, payable twenty-four months after date; one for the like sum, payable thirty months after date; one for the like sum, payable thirty-six months after date; one for the like sum, payable forty-two months after date; one for the like sum, payable forty-eight months after date; one for the like sum, payable fifty-four months after date; one for the like sum, payable sixty months after date; and one principal note for the sum of twenty-five thousand dollars, payable five years after date—all of said notes being payable at current rate of exchange on New York, at the office of W'm Nisbet & Co., St. Louis, and with interest after maturity, if not paid when due, at the rate of ten per centum per annum; and the
260 said party of the first part have also agreed with the said party of the third part, and his endorsers and assignees, to cause all taxes and assessments, general and special, to be paid, whenever imposed upon said property, and within the times required by law, and to keep the improvements upon said real estate free from mechanics' liens, and also to keep the improvements upon said real estate constantly and sat-

isfactorily insured for the sum of at least twenty thousand dollars, until said notes shall be fully paid, and the policy and policies thereof to keep constantly assigned to the said party of the second part, for the use of William Weightman, of Philadelphia, for the further securing the payment of said notes, with power to demand, receive, and collect any and all moneys becoming payable thereunder, and the same apply towards the payment of said notes, unless otherwise paid when they become respectively due; and if said agreements, relative to insurance, mechanics' liens, and taxes, be not performed, as aforesaid, then said party of the third part, his endorsees or assigns, may effect such insurance for said purpose, and pay such taxes and said mechanics' liens, when matured into judgment, and for their repayment, and for interest thereon from the time they shall have been respectively paid, at the rate of ten per centum per annum, these presents shall be a security in like manner, and with like effect, as for the payment of said notes.

Now, if said notes be paid when they become due, respectively, and said agreements concerning the payment of taxes and mechanics' liens, and keeping said improvements insured as aforesaid, be faithfully performed as aforesaid, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if default be made in the payment of said notes,
261 or any or either of them, when they become due, respectively, or if default be made in the performance of said agreements for the payment of taxes, against mechanics' liens, and procuring and keeping insurance on said property as aforesaid, then this deed shall remain in force; and the said party of the second part, or in case of his death, inability, refusal to act, or absence from said city of St. Louis, when authorized to sell under these presents, and a sale be desired by the holder of said notes, or any or either of them, then the sheriff of the said county for the time being, (who shall thereupon become the successor to the title of said property, and the same become vested in him in trust for the purposes and objects of these presents, and with all the power, duties, and obligations thereof,) may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the eastern front door of the court-house in said city of St. Louis, for cash, first giving twenty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some English newspaper, printed and published in said city of St. Louis, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, (a recital wherein of the giving of such notice, and in case such sheriff sell, of the happening of any or either of the aforesaid events, making him successor herein as aforesaid, shall be proof thereof,) and receive the proceeds of said sale, out of which they shall pay—first, the costs and expenses of executing this trust, including compensation to the trustee for his services; and next, to the payor thereof, upon the usual vouchers therefor, all moneys paid for insurance and taxes and mechanics' liens, as hereinbefore provided for, when not paid as hereinbefore agreed, and interest thereon at the rate of ten per centum per annum from the times of their payment; and next, such of said interest notes as then due and unpaid, and all interest grown thereon; and
262 next, if enough therefor, said principal note, whether due or not, and all interest grown therefor and thereon, and, if not enough therefor, then apply toward their payment what there is, and all said sums the then current rate of exchange on said city of St. Louis, in the city of New York; and in case all said demands be fully satisfied from said

proceeds, and any of said interest notes remain, the same shall be cancelled, and the balance of said proceeds, if any, shall be paid to the said party of the first part, or his legal representatives. And the said party of the second part covenants faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]

Executed in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this twenty-fourth day of January, eighteen hundred and sixty-eight, before me, the undersigned, a notary public within and for the State and county aforesaid, came John F. Darby and Mary M., his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

And the said Mary M. Darby, having been first made acquainted with the contents of said instrument by me, acknowledged, on an examination apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned and conveyed freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal at the city of St. Louis aforesaid the day and year above written.

[SEAL.] HERMAN A. HAENSSLER,
Notary Public St. Louis Co., Mo.

263 Filed and recorded January 24, 1868.

JULIUS CONRAD,
Recorder.

[5-c. rev. st'p. W. C. K., 1871.]

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder of deeds for said county and State, do certify that the foregoing is a true copy of an instrument in writing, executed by John F. Darby and wife, together with the acknowledgment, date of filing, and recording thereof, as the same remain on record in my office, in book 348, page 256.

Witness my hand and official seal this 24th day of February, A. D. 1871.

W. C. KENNETT,
Recorder St. Louis Co., Mo.

Darby & wife to T. H. Powers, t'r.

Deed of trust of John F. Darby and wife to trustees of Thomas H. Powers, dated January 3rd, A. D. 1868.

[U. S. stamp $29 00. J. F. D. Jan'y 3, '68.

This deed, made and entered into this third day of January, eighteen hundred and sixty-eight, by and between John F. Darby and Mary M. Darby, his wife, of the city and county of St. Louis, in the State of Missouri, party of the first part, and William Nisbet and Henry A. Nisbet,

of the same city, county, and State, party of the second part, and Thomas H. Powers, of the city of Philadelphia, in the State of Pennsylvania, party of the third part, witnesseth:

That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, a certain lot, piece, or parcel of ground, situate, lying, and being in the city of St. Louis, in the State of Missouri, in block number ten, (No. 10,) of said city, and described as follows, to wit: Beginning at a point on the east side or line of Main street, nineteen feet southwardly from the northwest corner of said block number ten, (No. 10,) which point is in the
264 centre or middle of the wall dividing the building on the corner of Olive and Main streets, now occupied by J. F. Darby & Co. as a banking-house, from the second store-house or building south from Olive street, and which is the northern wall of said building or store-house, and running thence southwardly, and with the eastern line or side of Main street, twenty feet, to the centre of the south wall of said second storehouse in said block number ten on Main street, south of Olive street; thence by a line running eastwardly in the centre of said southern wall of said second storehouse or building, ninety feet, to the western line or side of Commercial street; thence northwardly, by and with the western line or side of Commercial street, twenty feet, to the centre of the northern wall of said second storehouse or building on Main street, in said block (No. 10) south of Olive street; thence westwardly, by a line running directly in the centre of said northern wall of said second store-house or building, ninety feet, to the place of beginning on Main street; said lot of ground fronting twenty feet on Main street, and running back eastwardly the same width to Commercial street, ninety feet; bounded on the west by Main street, on the east by Commercial street, and on the north and south by land still belonging to John F. Darby, and on which said lot of ground is erected the second store-house or building on the east side of Main street, south of Olive street, in block number ten, (No. 10,) and which said store-house or building is four stories high on Main street, and is five stories high on Commercial street: To have and to hold the same, with the appurtenances thereto belonging, to the said party of the second part, and to their successors hereinafter designated, and to the assigns of him and of his successors forever.

In trust, however, for the following purpose: Whereas John F. Darby has this day made his certain eleven promissory notes, all bearing
265 even date herewith, and all in favor of Thomas H. Powers, with current rate of exchange on New York, and all payable at the office of William Nisbet & Co., St. Louis, and all bearing interest at the rate of ten per cent. per annum from maturity, *and* for the sum of nine hundred dollars, payable six months after date; one for the like sum, payable twelve months after date; one for the like sum, payable eighteen months after date; one for the like sum, payable twenty-four months after date; one for the like sum, payable thirty months after date; one for the like sum, payable three years after date; one for the like sum, payable three years and six months after date; one for the like sum, payable four years after date; one for the like sum, payable four years and six months after date; and one for the like sum, payable five years after date: all of which are interest notes, and one note being for the principal money loaned for the sum of twenty thousand dollars, payable five years after date. And the said John F. Darby

hath also agreed with the said party of the third part, and his endorsees and assignees, to cause all taxes and assessments, general and special, to be paid, whenever imposed upon said property, and within the times required by law, and keep the improvements upon said real estate free from mechanics' liens, and also to keep the improvements upon said real estate constantly and satisfactorily insured for the sum of at least twenty thousand dollars, until said notes shall be fully paid, and the policy and policies thereof to keep constantly assigned to the said William Nisbet and Henry A. Nisbet, for the benefit of Thomas H. Powers, for further securing the payment of said notes, with power to demand, receive, and collect any and all moneys becoming payable thereunder, and the same apply towards the payment of said notes, unless otherwise paid when they become respectively due; and if said
266 agreement relative to insurance, mechanics' liens, and taxes be not performed as aforesaid, then said party of the third part, his endorsees or assignees, may effect such insurance for said purpose, and pay such taxes and said mechanics' liens, when matured into judgment, and for their repayment and for interest thereon, from the time they shall have been respectively paid, at the rate of ten per centum per annum, these presents shall be security, in like manner and with like effect, as for the payment of said notes.

Now, if said notes be paid when they become due respectively, and said agreement concerning the payment of taxes and mechanic's liens and keeping said improvements insured as aforesaid, be faithfully performed as aforesaid, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but if default be made in the payment of said notes, or any or either of them, when they become due respectively, or if default be made in the performance of said agreement for the payment of taxes against mechanics' liens and procuring and keeping insurance on said property as aforesaid, then this deed shall remain in force; and the said party of the second part, or in case of his death, inability, refusal to act, or absence from said city of St. Louis, when authorized to sell under these presents, and a sale be desired by the holder of said notes, or any or either of them, then the sheriff of said county for the time being, (who shall thereupon become his successor to the title of said property, and the same become vested in him, in trust for the purposes and objects of these presents, and with all the powers, duties, and obligations thereof,) may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the eastern
267 front door of the court house in said city of St. Louis, for cash, first giving twenty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some English newspaper, printed and published in said city of St. Louis, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, (a recital wherein of the giving of such notice, and in case such sheriff sell of the happening of any or either of the aforesaid events, making him successsor herein as aforesaid, shall be proof hereof,) and receive the proceeds of said sale, out of which he shall pay—first, the costs and expenses of executing this trust, including compensation to the trustee for his services; and next, to the payor thereof, upon the usual voucher therefor, all moneys paid for insurance and taxes and mechanics' liens as hereinbefore provided for when not paid as hereinbefore agreed, and interest thereon at the rate of ten per cent. per annum, from the time of their payment; and next, such of said interest-notes as then due and unpaid and all in-

terest grown thereon; and next, if enough therefor, said principal note, whether due or not, and all interest grown therefor and thereon, and if not enough therefor, then apply towards their payment what there is, and all said sums, the then current rate of exchange of said city of St. Louis on the city of New York; and in case all said demands be fully satisfied from said proceeds, and any of said interest notes remain, the same shall be cancelled; and the balance of said proceeds, if any, shall be paid to the said party of the first part or his legal representatives.

And the said party of the second part covenant faithfully to perform and fulfill the trust herein created.

In witness whereof the said party hereto set their hand and seal the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]

Executed in presence of—

268 STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this third day of January, eighteen hundred and sixty-eight, before me, the undersigned, a notary public within and for the county aforesaid, came John F. Darby and Mary M. Darby, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

She, the said Mary M. Darby, having been by me first made acquainted with the contents of said instrument of writing, on an examination apart from her said husband, acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned and conveyed, freely and without compulsion or undue influence of her husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] JOSEPH L. PAPIN,
Notary Public St. Louis Co., Mo.

Filed and recorded February 3d, 1868.

JULIUS CONRAD,
Recorder.

[5-c. rev. stamp. W. C. K., Feb. 23, '71.]

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder of deeds for said county, certify that the foregoing is a true copy of an instrument in writing executed by John F. Darby and wife, together with the acknowledgment, date of filing, and recording thereof, as the same remain on record in my office, in book 347, page 374.

Witness my hand and official seal this 23d day of February, A. D. 1871.

[SEAL.] W. C. KENNETT,
Recorder St. Louis Co., Mo.

269 *J. F. Darby & wife to A. Duncan's trustee.*

Deed of trust of John F. Darby and wife to Alexander Duncan's trustee, dated July 1st., A. D. 1859.

This deed, made and entered into this first day of July, eighteen hundred and fifty-nine, by and between John F. Darby and Mary M., his wife, of the city of St. Louis, State of Missouri, parties of the first part, William M. McPherson and Leicester Babcock, of the same place, parties of the second part, and Alexander Duncan of the city of New York, State of New York, party of the third part, witnesseth:

That the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey and confirm unto the said parties of the second part, the following-described lot or parcel of ground situate in the city of St. Louis, and in block No. twenty-nine (29) of said city, containing a front on Main street of twenty feet (20 ft.) by one hundred and forty feet deep, to an alley, bounded east by said Main street, south by a lot formerly owned by Ja's T. Sweringen, west by said alley, and north by a lot now or formerly of Jno. B. Sarpy, and being the same premises acquired by said first party of John C. Abbott, by deed of Dec. 17th, 1835, recorded in book V, 256, of St. Louis county records: To have and to hold the same, together with the appurtenances, to the said parties of the second part, and to their heirs, executors, administrators, and assigns and conditional successor hereinafter named, forever.

In trust, however, for the following purpose: Whereas the said John F. Darby being indebted, has executed to said Duncan his promissory notes, as follows, all bearing even date herewith, to wit: one principal note for fifteen thousand dollars, payable four years after date; also eight other notes for the semi-annual interest thereon, each for
270 seven hundred and fifty dollars, payable respectively, in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, and forty-eight months after date. All of said notes are payable at the banking-house of Duncan, Sherman & Co., in the city of New York, and all of said notes bear ten per cent. per annum interest after maturity.

Now if the said notes shall be well and truly paid, according to the tenor and effect thereof, when the same becomes due and payable, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part; but if said notes, or any one of them, or any part thereof, shall not be well and truly paid, when the same becomes due and payable, and at the place aforesaid, then upon such failure said principal note, if not due, shall at once become due and payable, if so determined by the holder thereof, and then this deed shall remain in force; and the said party of the second part or their legal representatives, or either one of them, or in case of death or absence from the State of both, then the sheriff of the county, may proceed to sell the property to be sold, hereinbefore described, or any part thereof at public vendue, to the highest bidder, at the court-house door in the city of St. Louis, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed in the city of St. Louis, and upon such sale shall execute and deliver a deed in fee simple of the property sold, to the purchaser or purchasers thereof,

and receive the proceeds of said sale, out of which they shall pay—first, the cost and expenses of this trust, and next, the full amount unpaid on said note given for principal, together with all interest due to day of sale; and the remainder, if any, shall be paid to the said party
271 of the first part, or to their legal representatives.

And the said parties of the second part covenant faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
L. BABCOCK. [SEAL.]
W'M M. McPHERSON. [SEAL.]

Executed in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this twenty-first day of July, A. D. eighteen hundred and fifty-nine, before me, the undersigned, a justice of the peace in and for the county aforesaid, came John F. Darby and Mary M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned.

And she, the said Mary M. Darby, being by me first made acquainted with the contents of said conveyance, acknowledged, on examination separate and apart from her husband, that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Taken and certified the day and year above written.

PETER W. JOHNSTONE,
Justice of the Peace.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder in and for said county, do hereby certify that the foregoing instrument of writing was filed for record in my office July 21st, 1859, and is truly recorded in book 220, page 237.

Witness my hand and official seal the date aforesaid.

[SEAL.] C. KEEMLE, *Recorder.*

272 *Deed of John F. Darby and wife to Alexander Duncan's trustee.*

Deed of trust of John F. Darby and wife to Alexander Duncan's trustees, dated first day of July, 1859, recorded in book 222, page 433.

This deed, made and entered into this first day of July, eighteen hundred and fifty-nine, by and between John F. Darby and Mary M., his wife, of the city and county of St. Louis, State of Missouri, parties of the first part, William M. McPherson, and Leicester Babcock, of the same place, parties of the second part, and Alexander Duncan, of the city of New York, State of New York, party of the third part, witnesseth:

That the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain,

and sell, convey and confirm unto the said parties of the second part, the following-described lot or parcel of ground, situate in the city of St. Louis, State of Missouri, to wit: A lot in block number one hundred and sixteen (116) of said city, containing a front of thirty-five (35) feet on Fifth (5th) street, by one hundred and twenty-seven feet six inches deep, bounded east and in front by said Fifth street, south by a line parallel to and thirty-five feet south of the south line of Olive street, west by an alley, and north by Olive street, being a corner lot, and being a portion of the same premises acquired by said first party of P. D. Tiffany, by deed of January 16th, 1849, recorded in St. Louis County records, book W, page 479: To have and to hold the same, together with the appurtenances, to the said parties of the second part, and to their heirs, executors, administrators, and assigns, and conditional successor hereinafter named, forever.

In trust, however, for the following purpose: Whereas the said
273 John F. Darby, being indebted, has executed to said Alexander Duncan his promissory notes as follows, all dated even date herewith: one principal note for twenty thousand dollars, payable five years after date; also, ten other notes for semi-annual interest on said principal, each for one thousand dollars payable respectively, in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, and sixty months from date, all payable at the banking-house of "Duncan, Sherman & Co.," in the city of New York, and all bear ten per cent. interest after maturity.

Now, if said notes shall be well and truly paid, according to the tenor and effect thereof, when the same becomes due and payable, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part; but if said notes, or any one of them, or any part thereof, shall not be well and truly paid when the same becomes due and payable, and at the place aforesaid, thereupon such failure said principal note, if not due, shall at once become due and payable, if so determined by the holder thereof, then this deed shall remain in force; and the said parties of the second part, or their legal representatives, or either one of them, or, in case of death or absence from the State of both, then the sheriff of the county may proceed to sell the property to be sold hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court-house door in the city of St. Louis, for cash, first giving thirty days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed in the city of St. Louis, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and
274 receive the proceeds of said sale, out of which they shall pay—first, the costs and expenses of this trust, and next, the full amount unpaid on said note given for principal, together with all interest due to day of sale; and the remainder, if any, shall be paid to the said parties for the first part, or their legal representatives.

And the said parties of the second part covenant faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN F. DARBY. [SEAL.]
MARY M. DARBY. [SEAL.]
W'M M. McPHERSON. [SEAL.]
L. BABCOCK. [SEAL.]

Executed in presence of—

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this twenty-first day of July, A. D. eighteen hundred and fifty-nine, before me, the undersigned, a justice of the peace within and for the county aforesaid, come John F. Darby and Mary M. Darby, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

And the said Mary M. Darby, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination separate and apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Taken and certified the day and year above written.

PETER W. JOHNSTON,
Justice of the Peace.

275 STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder of said county, certify that the foregoing deed was filed for record in my office July 21, 1859, and is truly recorded in book 222, page 433.

Witness my hand and official seal the date aforesaid.

[SEAL.] C. KEEMLE, *Recorder.*

(Endorsed) "Released Oct. 28, '68. Julius Conrad, recorder.

EVIDENCE FOR DEFENDANT.

Deposition of James H. Lucas.

Deposition of James H. Lucas, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the 26th day of May, A. D. 1870.

JAMES H. LUCAS, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Gantt:

Q. You are defendant, I believe, in the case of Andrew Park and John K. Tiffany, trustees of John F. Darby, against James H. Lucas, now pending in the United States district court?

A. Yes, sir; I believe so.

Q. You purchased a piece of property from Mr. Darby by deed, bearing date the 24th of April, 1869. At the time you purchased that property had you any knowledge or intimation that Mr. Darby was in bankrupt circumstances.

A. No, sir; none whatever. I had no intimation from any quarter, except if it should be that a man's paper is selling on the street, and
276 some person might think that is an evidence; but I know from my own experience that a man may sell his paper on the street at a great sacrifice and still not be broke, by any means.

Q. When did you first receive any intimation or knowledge that Mr. Darby was a bankrupt?

A. I do not recollect, sir; but some time after the transaction I had with him. I do not remember how long it was, sir.

Q. Was it before or after he suspended payment as a banker?

A. Yes, sir; I believe it was. Or, I think, it was simultaneous. I did not hear anything of it until he stopped payment.

Q. The price of that, as expressed in the deed which you took for it, was declared to be $200,000; of which $150,000 was a loan made by Mr. Darby and existing as a lien on the property, the payment of which you assumed?

A. Yes, sir.

Q. State what that property is or was worth, according to your judgment, at the time you purchased it?

A. Well, sir, I thought it was worth about the amount I paid for it, to me; but I do not think it would have been to many persons worth so much; that is, that but few people could have afforded to have bought it at that price at the time; but I thought, for me, who have a family, and none of them in business, that if I could get productive property in large amounts like that it was my policy to do so; and that I could even pay more than the thing was worth to get such a class of property.

Q. With whom did you conduct negotiations for the sale of that property? Who proposed the purchase of it to you?

277 A. Mr. Hodgman, the cashier of the Boatmen's Savings Institution, in which I have been a member of the board for some years. Mr. Hodgman proposed to me to sell me that property for Mr. Darby. He told me he was authorized to sell it, and he urged me to make him a proposition, and after some time I made him that proposition exactly as I have stated; and Mr. Hodgman asked me to include the taxes; that I assumed the payment of the taxes. I told him I would would not assume anything. He asked me if I would not pay the State and county taxes the current year, which usually falls to the owner of the property, unless there is an agreement made to relieve the party, and upon that (I do not know whether it was at the time or very soon afterwards, because I never liked to leave a proposition open, unless both parties have a right to decline) it was very soon after accepted. I do not know whether it was accepted that time by Mr. Hodgman exactly. It might have been the same day or the next day. I do not remember in regard to that.

Q. After you accepted it, had you an interview with Mr. Darby?

A. None, sir, until it came to closing the matter up; then I went to Mr. Darby, at the suggestion of Mr. Hodgman, to close it up, and Mr. Darby made the deed himself, and I paid him a $50,000 check down.

Q. (Handing a paper to witness.) Is that the check?

A. Yes, sir; that is the check that I paid; a check for $50,000. (Paper marked "Exhibit A," at end of this deposition.)

Q. Who paid the State and county taxes?

A. I paid them, sir; when the collector came around, I knew Mr. Darby was bankrupt, and that he would not pay them, and I paid them.

Q. Is that the receipt here? (handing witness a paper.)

278 A. Yes, sir; that is the tax receipt. (Paper attached to this deposition, marked "Exhibit B.")

Q. What papers are these, sir? (handing papers to witness attached to this deposition, and marked "Exhibits C, D, & E.")

A. These are notes for interest on the $150,000, of which I paid several; the first of them Mr. Darby assumed to pay, and I had so much confidence, that I left him to pay it; he still owned it when I gave him the $50,000 check.

Q. That is the note that came due in May, 1869?

A. Yes, sir; the first of May the contract took effect; I received the rents from that day, and up to that period, he was to pay the interest.

Q. How long have you known Mr. Darby?

A. About 30-odd years; he never was an intimate friend of mine; I knew him slightly when I moved here 33 years ago; I knew him very well after that; we were on the same side in politics, and were mixing with people after I came here together, in that way, and I have known him quite well since then; our families associate—my wife and his wife.

Q. For 30 years past, sir, what have been Mr. Darby's circumstances as to his possessing much or little property here in St. Louis?

A. Well, sir, when the troubles of 1840 came up, Mr. Darby had a hard time to work through, as I understand, and I heard from other people speaking, and I got my views from them. He is a man of wonderful energy and capacity for business, and he worked through that dismal period successfully, as I understand—saved a great deal of his property, of which he had a large amount, and he lost some, but he saved a large amount.

Q. Well, sir, two years ago, did you know of any property which stood in his name?

279 A. Yes, sir; I knew he had a house on Main st. and a house on 5th st., and had land out here in the country; I knew he had some lead mines. I once had a negotiation for an interest which he claimed to hold in a lead mine—which I supposed he had.

Q. You knew him to have a house on Main str. and this property on 5th str.?

A. Yes, sir.

Q. Any other?

A. I don't recollect; he had some lands out back here five or six miles; I do not know how long ago—perhaps within two years; I know he had some lands beyond Rinkle's—quite a body of land there of his; I do not know what he paid for it—whether he sold it or not; I suppose he did.

Q. In what business was Mr. Darby engaged a year ago?

A. In the banking business and in the lead business—melting lead out in the country here.

Q. What is the value, annually, of that property that you bought from Mr. Darby, after paying taxes, insurance, and so forth, how much does it nett you?

A. I will have to make some figures on that; I have got the figures in my head, (after calculating on a piece of paper;) I cannot tell you exactly what it is now; until I bought the property, I never examined how much; I supposed that it brought a good deal more than I found out it did, but about $17,000 was the amount, it seems to me, it brought.

Q. Nett?

A. No, no, gross, sir; that is within $500 of that, gross; I cannot tell you the exact figures, but about $17,000 gross.

Q. Well, sir, that tax-bill that you put in there speaks for
280 itself. You speak now for the year beginning the 1st of May, 1869?

A. Yes, sir.

Q. And ending the 1st of May, 1870?

A. Yes, sir.

Q. Are there any other expenses—any insurance?

A. Yes, sir; there is an insurance—a pretty heavy insurance; I have renewed some policies, but I have not paid on all of them yet, but pretty much though; I paid quite a large sum two or three months ago in re-

newing policies on a portion of it; the others have not run out since he took them; there has been no call made for money, but I suppose you may safely estimate the expense of insurance at from $600 to $1,000; there has to be $100,000 insurance kept on it for the benefit of the Insurance Company of Philadelphia; I pay the taxes just whenever there are any due; about $17,000, my recollection is, will cover the case, that is, gross; I do not think it is over that $500—either one way or the other; the corner store brought $6,000 then; now it only brings $5,500; it was rented much lower than I supposed when I made the trade.

Q. In this bill it is stated: "Your orator further charge that said James H. Lucas, knowing the insolvency of John F. Darby, well knew that certain of the said interest notes were shortly due and payable by said Darby, and that said Darby had no funds to pay the same, and that said Lucas deducted from the cash balances due to said Darby the amount of said principal and notes which was about to fall due, lest said Darby fail to pay the same." Is that correct?

A. No, sir, it is not; I never had the least idea of his paying it, because I paid him a $50,000 check without reservation of any kind;
281 I have always thought Mr. Darby was an honorable man—a man in business that could be relied upon; that was my opinion all the time, and I acted with him as I would with any other gentleman that I thought would be a punctilious business man.

Q. State if you had confidence in his solvency also?

A. I had, I assure you; it never occurred to me otherwise; I knew he had been embarrassed and borrowing money, but some of the best men in town endorsed for him who were said to be perfectly good—stood by him, and I suppose knew more of his business, and would not have done it if they had not known that they were justified in so doing.

Cross examined by Mr. Shepley:

Q. You were connected with the banking business for quite a number of years, I believe; when was that?

Q. I was connected with a private banking institution for a number of years with Captain Simonds, if you have reference to that, in which we lost a great deal of money and stopped payment.

Q. With Captain Turner also?

A. Yes sir; he was a partner; nobody lost anything though but me; I lost all that was lost.

Q. How long were you a banker?

A. Well, I do not recollect; about '51 or '52 we commenced, it appears to me.

Q. Seven or eight years?

A. Yes, sir, 5 or 6 years I should say, during which time I stopped once and finally.

Q. You have stated that you were connected, as a director, with the Boatmen's Savings Institution?

A. I have been there a kind of an ornamental director since I
282 stopped my banking business; after I stopped payment, they sent me notice of my election, since I closed up my business; when I said I quit my banking business they asked me to go there, and stated that I would not be required to attend the regular meetings of the board unless I chose, and I have been a kind of ornamental member ever since. I do not, by any means, consider myself responsible for what they do, but whenever they have asked my views sometimes, not about this matter, but about general questions that have come up, I have given them; I never considered myself a responsible director

there at all, though I frequently go there; for instance, I went there the other day to attend the election of the new cashier, and so forth.

Q. During the year 1868–'9 were you there generally at the meetings of the board?

A. No, sir; I could not say that I was generally at any meeting of the board; I used to go there to get the news more than anything else.

Q. You went there as often as once a week, generally, did you not?

A. I suppose I averaged that.

Q. You did so in 1868–'9 did you not?

A. I did, sir; I have done so generally since 1856 or 1857—since I have stopped payment. I go in there I suppose once a week, perhaps more.

Q. Do you know of a loan of $135,000 made to Mr. Darby by the Boatmen's in 1868?

A. No, sir; I knew nothing about that until recently—until after his suspension. I never even heard of it until within two or three months ago, when it seems to me I heard some conversation about it;
283 previous to that time I knew nothing about it.

Q. Did you know that the Boatmen's frequently purchased or discounted notes for Mr. Darby?

A. Yes, sir; and had done so for years back.

Q. I mean during the year 1868–'9?

A. Yes, sir; I know that his notes were discounted there, and the same way with others; I cannot say the time exactly. In reference to the Boatmen's Saving Institution, people are considered very good whose paper they do not want, because they make them carry it too long; and because a man's paper is refused there is no evidence that it is not good; it may be perfectly good, and still be refused because they expect too much of them. I merely mention that; and occasionally good paper is discounted; sometimes paper that is bought on the streets. I believe I remember of selling or hearing of some paper having been bought on the street and discounted at their board with an endorsement by Mr. Knox. I do not know that Mr. Darby's would have been discounted alone. I do not know whether it would or not.

Q. Did not Mr. Darby suspend in 1857?

A. I believe he did. I suspended also, and borrowed nearly half a million of dollars, and pledged nearly all my property for it, but the property I gave was worth a million and a half, as collateral security; but I never felt myself broke, although I suspended. I was mortified more than anything else.

Q. At the time that you purchased this property, did you have the title examined; do you recollect?

A. No, sir; I do not believe I ever did.

Q. How long was it from the time that Mr. Hodgman first spoke to you about this property to the time that you first contemplated
284 purchasing it?

A. Well, sir, once, before I made a positive trade, he proposed to me in reference to this matter, and we parted without doing anything.

Q. How long was that before the final trade was made?

A. I suppose it was, perhaps, two weeks or a month. He first mentioned the matter to me, and then it was afterwards renewed; he afterwards renewed his proposition to me, and finally I closed it.

Q. The time he made you this last proposition did you at once respond as to what you would give him?

A. Well, there was some little hesitation. I think I felt a hesitancy in paying so much money at once, on the spur of the occasion, but I found I could do it. I did not care then.

Q. The sale itself bears date on the 24th of April, 1869; how long was it before that time that this last conversation with Mr. Hodgman took place?

A. It must have been within 3 or 4 days, sir, because I would not have had a matter of that kind in abeyance for any longer time where there was so much money; it is not very convenient to keep $50,000 waiting on a man.

Q. Was there any difference in the value of property at the time you purchased it, from what it was in the fall of 1868—a year before?

A. Yes, sir; a very great difference, in my estimation, and it has even gone down since.

Q. Will you state what your judgment is based on?

A. Well, sir, the business of St. Louis has fallen off very much, and there were very few purchases of real estate, money was scarce, and there was a near approximation to specie currency of the country; it was published all over the country that they were going to have
285 specie, and a great many hauled in their horns. I did myself, and everybody did; it changed the whole face of things; things have changed—changed so much that I cannot sell a lot, and have not sold a lot in a year.

Q. Why?

A. Because the people are afraid of real estate; they are afraid of the change from currency to specie and it is more than it should be, that is, the apprehension is greater than there is any reason for, in my opinion, still I have to go by public opinion. I cannot do business on my own hook, independent of what other people think; we are governed by the settled opinions of our neighbors in the country around us, and since that time my income has fallen off $50,000, since I made that bargain—$50,000, at least, in rents.

Q. As to the relative value of that property, with other property in town, what is your opinion as to whether any other property is more valuable than that?

A. I look on it as first-class property, *first-class property*, but I do not consider it worth as much as property that I have on 4th street. I used to think it was worth as much as I value the 4th-str. property at now; but, sir, if you leave the choice of 4th-street property out, that property comes close after it; but still it is not in that condition to pay; it does not pay in that proportion even, because it is a new place, and there is some doubt as to its paying at the rate we supposed it would some time ago; at one time 5th street looked as if business was going to run off of 4th street, but we find it is changed; but 5th street will come out in the long run, and that will be one of the best pieces of property on 5th street, and is now one of the best on 5th street, but the house is
286 not well planned; it is not well planned as such a house ought to be, and I would have planned it very greatly different; it is not worth as much as it would be if it were planned differently, but I did not notice that until after I had bought it.

Q. Did you pay Mr. Hodgman any commission for acting as the agent of Mr. Darby?

A. Not a cent. I heard nothing about any commission, and would not have paid a cent. Hodgman acted solely as the agent for Mr. Darby.

Q. Were you not aware for some time previous to that transaction, Mr. Lucas, that Mr. Darby's paper was selling at a large discount on the street, and by note-brokers?

A. Well, sir, I saw his name on the street, or knew of it, with those

gentlemen that I mentioned as endorsers; that it was selling at 12 per cent. discount. I heard it from a source that I could not doubt at all, even with that name on it; money was tight though—scarce.

Q. Was that near about the time that you made this purchase?

A. Not far from that time, sir.

Q. Is not that one reason why the property that you speak of as not producing a large revenue—was not it for that reason that Mr. Darby had previous to that leased it, in his extremity, in order to get it to produce more revenue? Was not it idle for a time, and did not Mr. Darby lease it at a low lease?

A. Well, sir, I cannot tell about that; some of them will bring $1,000 more than they are rented for. I don't think now. I am getting $5,500 for the corner store; that store I could not get $6,500 for it to save my life. I had it up for 5 or 6 months to lease; it was rented
287 to Mr. White when I acquired the property. White failed in business, and nobody would give me $6,000 for it; that was the rate that he was paying. I could not get that for it, at least, and finally the proprietor of the dollar store came to me; he was recommended as a pretty good tenant, and I took $5,500, and was glad to get it, and am glad to get it now; but I think the time will come, after making some alterations in the building, when it will be worth more—when it will pay better.

Q. Mr. Darby finally paid the May interest, did he?

A. I never heard a word otherwise. I reckon it would be sold under the deed of trust, if it had not been, as the Philadelphia people do not wait long.

Re-examination by Mr. Gantt:

Q. You were asked about Mr. Darby's paper having been sold on the street for 12 per cent.?

A. Yes, sir; most people were paying 10 per cent. at the time this paper went at 12. Now the Boatmen's discounts a customer who keeps an account there at 8 per cent.; but any man who is not a regular customer they discount at 10 per cent., sometimes.

Q. At the time that gold was very high—at one time, the premium of gold was $1 80, that is, one dollar in gold was worth $2 80 in paper—at that time was not it a fact that everybody was seeking investments in real estate?

A. Yes, sir; a great many people that had money wanted to turn their money into something that was certain, and they did not know whether greenbacks were certain or not, and they bought property. I remember I sold Mr. Brown a considerable quantity of vacant property over here, which he bought for no other purpose than that he was afraid of his money.

Q. Is that Joseph Brown?

288 A. Yes, sir.

Q. Is he the man that you allude to who offered $250,000 for this property on 5th street?

A. Yes; he is the same man. I sold him several lots here at a good price, and at the time I could use the money to pay my debts, and it stood me just as well. I sold him the property, and he paid me every dollar of it down in greenbacks; it was no credit operation. I did hear that somebody offered $300,000 for this property, but I never knew who that was.

Q. How long ago was that?

A. I think it was within two or 3 years. Well, not since the war, perhaps; I do not recollect exactly.

Q. You say it was not since the war?

A. Perhaps it was; I do not know but it was.

Q. Brown offered that?

A. Yes; to state when, my memory does not serve me. Brown never told me this, but it was generally understood that he offered it.

Q. At the time you heard of his offering that, that was the time when gold was the highest?

A. Well, no; I cannot tell exactly the time, because I did not know from Brown anything about it; but I have no doubt that he did offer that for it.

By Mr. SHEPLEY. Q. Was not it in the year before you bought that you heard that Mr. Brown made this offer?

A. I cannot say.

JAMES H. LUCAS.

Subscribed and sworn to before me this 28th day of May, A. D. 1870.

L. L. WALBRIDGE, [SEAL.]
Notary Public St. Louis Co., Mo.

289 *Exhibit "A," referred to in the deposition of Ja's H. Lucas.*

Exhibit "A," referred to in J. H. Lucas' deposition.

No. .] ST. LOUIS, *April 26th*, 1869.

Boatmen's Savings Institution, pay to John F. Darby, or order, fifty thousand $\frac{}{100}$ dollars—$50,000.

JAMES H. LUCAS.

Endorsed by John F. Darby.

EXHIBIT "B."

Exhibit "B," referred to in James H. Lucas' deposition.—City book 5, bill 119a, State county, city, and school taxes for 1869.

Received of John F. Darby $\frac{}{100}$ dollars, being the amount of city & school, State, and county taxes for the year 1869, in St. Louis County, on real estate as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.
116	5th..	75	128	.....	.....	.....	Olive str.	5th str.	Alexander.	Alley.....	98, 750
Exhibit "B."										{SEAL OF COUNTY AUDITOR'S OFFICE.}	
										Personal.....	.....
										Total.....	98, 750

Designation of taxes.		Aggregate of assessed value.	Amount of taxes.
			Dolls. Cts.
State revenue	0.25 p. c.		
" interest	0.25 p. c.		
Total	0 50 p. c.	98,750	493 75
Exempt from county, school, & city tax			
Subject to county, school, and city tax			
County taxes, 0.45 p. c			444 37.5
School tax, 0.40 p. c			395 00
Special exemption for city			
City—general, police			
Harbor, sewer—total, 1 50 p. c			1,481 25
Lafayette park taxes, 0.10 p. c			
" " " 0.20 p. c			
Total		98,750	2,814 37.5

Paid by James H. Lucas.

N. M. HARRIS, *Collector*,
By D. J. STILLINGER, *Deputy*.

Exhibit B.—L. L. W.

ST. LOUIS COUNTY, *Dec'b'r 9th*, 1869.

290

EXHIBIT "C."

"Exhibit C," referred to in James H. Lucas' deposition.

ST. LOUIS, MO., *28th October*, 1868.

Twelve months after date I promise to pay to the order of the American Life Insurance Company of Philadelphia twenty-four hundred dollars, for value received, negotiable and payable without defalcation or discount, and with interest from maturity at the rate of eight per cent. per annum, at the office of the American Life Insurance Company of Philadelphia.

JOHN F. DARBY.

(Written in red ink across the face:) Paid by Ja's H. Lucas.

Secured by deed of trust, duly stamped and recorded.
(Endorsed:) John S. Wilson, sec'y.

EXHIBIT "D."

"Exhibit D," referred to in James H. Lucas' deposition.

ST. LOUIS, MO., *28th October*, 1868.

Twelve months after date I promise to pay to the order of the American Life Insurance Company of Philadelphia two thousand dollars, for value received, negotiable and payable without defalcation or discount, and with interest from maturity at the rate of eight per cent. per annum, at the office of the American Life Insurance Company of Philadelphia.

JOHN F. DARBY.

(Written across the face in red ink:) Paid by Ja's H. Lucas.

Secured by deed of trust, duly stamped and recorded.
(Endorsed:) John S. Wilson, sec'y.

EXHIBIT "E."

"Exhibit E," referred to in James H. Lucas' deposition.

ST. LOUIS, MO., 28*th October*, 1868.

Twelve months after date I promise to pay to the order of the American Life Insurance Company of Philadelphia sixteen hundred dollars, for value received, negotiable and payable without defalcation or discount, and with interest from maturity at the rate of eight
291 per centum per annum, at the office of the American Life Insurance Company of Philadelphia.

JOHN F. DARBY.

(Written in red ink across the face:) Paid by Ja's H. Lucas.

Secured by deed of trust, duly stamped and recorded.
(Endorsed:) John S. Wilson, sec'y.

Deposition of John G. Priest.

Deposition of John G. Priest, taken before L. L. Walbridge, a notary public in and for the county of St. Louis and State of Missouri, at the city of St. Louis, in said county and State, on the 30th day of November, A. D. 1870.

JOHN G. PRIEST, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Gantt:

Q. What is your age, residence, and occupation?

A. My residence is 1003 Chouteau avenue; my age, 48; occupation, real-estate agent.

Q. How long have you been so employed?

A. Very near 20 years.

Q. Are you acquainted with the value of property in St. Louis?

A. I think so, sir.

Q. Do you know a piece of ground, having a front of 75 feet on 5th street and a depth of 127½ feet to an alley, bounded on the north by Olive street and the east by 5th, known as the Darby building?

A. Yes, sir.

Q. Have you ever been through this building?

A. No, sir, for no particular purpose of examining it; only different portions of it on matters of business from time to time.

Q. Assuming that property to have been, in May, 1869, encumbered by a mortgage or deed of trust for $150,000, bearing eight per
292 cent. interest, what sum would you consider a fair price for the property?

(Answer ruled out by court.)

Q. We want to get at your opinion.

A. My impression was that he had paid the full value of the property, taking into consideration the encumbrance that was upon it, which was a very considerable item to assume—an incumbrance of eight per cent. or anything over six per cent. As to the value of the building, and what it would cost to erect it, or what it was worth, I do not know.

Q. Do you know enough to be able to answer the question whether or not it is advantageously improved?

(Answer ruled out by court.)

Q. You knew what Mr. Lucas paid over and above the encumbrance, did you?

A. I think I had one or two conversations with him after the thing was closed. In fact, I knew of the sale going on some time before it was closed.

Q. What was the amount he paid over and above the encumbrance?

A. I understood he paid $200,000 for the property.

Q. $50,000 above the encumbrance?

A. Yes, sir.

Q. Of what firm are you a member?

A. Of the firm of Belt and Priest.

Q. Belt & Priest are real-estate agents, are they?

A. Yes, sir.

Q. How long have you been in business?

A. We have been in business over eighteen years now, sir.

Q. State whether your firm do a large or small business?

A. Well, sir, I think we have done as large a business in real estate as any other house. As a general thing, I think our business is
293 equal to any other house. I try to make it so, at least.

Cross-examination by Mr. Knox, counsel for plaintiffs:

Q. Who did you converse with, about the time this property was sold, as to its value?

A. Well, I really do not know. I recollect conversing with one gentleman, who told me that he had offered more for the same property.

Q. I merely want to know who you conversed with?

A. I cannot tell.

Q. How many persons did you converse with in relation to it?

A. Well, I do not know that.

Q. Was the property worth more or less the last of April, 1869, than it was in September, 1868?

A. Well, sir, I do not recollect that.

Q. If the property was worth $300,000 in September, 1868, what was it worth in April, 1869?

A. I do not recollect of anything to occur that there should be any very great difference. At the same time, during the last few years, property has been affected by the rise and fall of gold as most everything else has been.

Q. Has central property, like that which you speak of, the Darby building, been affected by the rise and fall of currency?

A. Well, sir, as much, I suppose, as any. There was a time, and I might correct myself in this, that property has really been less affected by the rise and fall of gold than most anything that was an article of commodity or anything saleable.

Q. Has central property in St. Louis been affected in the last three years?

A. No, sir; not affected, except at one time, pretty soon after the close of the war, when there was a very great redundancy of
294 greenback currency, and people not knowing exactly what it was coming to. I know hundreds of thousands of dollars, perhaps, that were placed in property at that time, in 1865 and 1866.

Q. If property was worth, in September, 1868, $300,000, wasn't it worth in April following $320,000?

A. I do not see any reason that there should be any great difference in that short time.

Q. What property in town is worth more, per front foot, than the corner of Olive and 5th street, where the Darby building is located?

A. The corner of Olive and 4th.

Q. You regard that as of more value?

A. I do.

Q. Do you regard any other property in town as more valuable?

A. I regard as more valuable any property on 4th street from Chestnut str. to Washington av'e as worth fifty per cent. more than property on 5th street of these corresponding locations. That is my view at the present time, and has been for the last three or four years. Fifth-street property has increased in value more, perhaps, than has 4th-street property in the last four years; but I believe, for instance, I believe the corner of Fourth and Olive street—now understand me—the corner of Fourth and Olive, the southwest corner, is worth to-day, improved property, fifty per cent. more than the southwest corner of Fifth and Olive streets.

Re-examined by Mr. Gantt:

Q. Did or did not a decline in the price of real estate occur in 1869 as compared with the rates ruling in 1868?

A. Well, I cannot recollect. I do not recollect any particular thing.

Q. When was Mrs. Russell's property sold?

A. In 1868; June, 1868. I recollect now.

295 Q. Was or was not the price obtained for that property as large, or less, or greater than the *property* that could have been obtained for it since?

(Objected to as incompetent.

Answer ruled out by court.)

Q. Was or was not that the case generally last year, in the year 1869? Was it not very difficult to make sales of property in St. Louis?

(Objected to as leading.)

A. Well, sir, come to think of it, and to think of the sales made the year previous, *in* this matter of the Dubois sale recalls it to my mind, I think property was more saleable in 1868 than in 1869; I am now pretty confident of it, when my mind reverts to it.

Q. State whether the price of real estate was better or worse in 1869 than it was in 1868?

(Objected to as incompetent, and not growing out of the cross-examination.)

A. Well, I think I have the same answer as to the other; it was tighter in 1869 than in 1868; property don't appear to have been as saleable in 1869 as in 1868.

(Signature waived.)

Centenary Church to John J. Roe.

Copy of deed of Centenary Church to John J. Roe.

[U. S. stamp $142 00. T. P. and others, 21, 11, 1868.]

This deed, made and entered into this twentieth day of October, in the year of our Lord eighteen hundred and sixty-eight, by and between John H. Gay, Trusten Polk, John Hogan, John Kennard, John W. Burd, William C. Jamison, Charles C. Anderson, William H. Markham, and Philip M. Lockwood, of the county of St. Louis, and State of Missouri, trustees of the Centenary Church of the Methodist Episcopal South, of the city of St. Louis, in said county, parties of the first part,

and John J. Roe and John G. Copelin, of the same city, parties of the second part, witnesseth:

296 That James Harrison and wife, by their deed dated thirtieth day of May, eighteen hundred and forty-six, recorded in the recorder's office of the aforesaid county, in book D, No. 4, page 25 and following, did convey the premises hereinafter described, to the trustees of the said Centenary Church as therein named, of whom the said John H. Gay, and the said Trusten Polk are two, and two others, of whom William Burd and Alfred M. Rucker have since departed this life, which said conveyance was to the said trustees therein named as joined tenants, and not as tenants in common, to them and to the survivor of them and to his heirs and assigns, to and upon the uses therein set forth, among which was the provision that as often as any one or more of said trustees should cease to be a member or members of said board of trustees, by any other means than death, it was made the express duty of such trustee or trustees, and each of them so ceasing to be a member or members of said board of trustees, to convey by such assurances as should be apt and sufficient therefor, all the right, title, interest, estate, property, claim, and demand of those or that one of said trustees so ceasing to be members or a member of said board of trustees in and to the land and premises therein described, with the appurtenances and improvements thereon, which are the same land and premises as hereinafter described, to such person or persons as should be chosen trustee or trustees as his or their successor or successors; and Nathaniel Childs, jr., and Benjamin M. Backinsto, and Edward J. Gay, and Thomas Calven, the other four of the said trustees in said deed named, having ceased to be members of the board of trustees of said Centenary Church, did, by their deed dated the twenty-fifth day of April, eighteen hundred and sixty-eight, convey all the right, title, interest, estate, property,

297 claims, and demand vested in them and each of them, by the aforesaid deed to John Hogan, John W. Burd, William C. Jamison, John Kennard, Charles C. Anderson, Philip M. Lockwood and William H. Markham, who are also among the trustees and parties of the first part herein named, which said last-mentioned deed is also recorded in the said recorder's office, in book No. 366, page 522: In consideration of the premises and the sum of one hundred and forty-two thousand dollars paid and secured to be paid by said parties of the second part to the said parties hereto of the first part, the receipt of which is hereby acknowledged, said parties of the first part have, as they hereby do, grant, bargain and sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns, the following-described lot or parcel of land, fronting eastwardly on Fifth street, sixty-four and a half feet, and extending back westwardly by a width equal to its said front, one hundred and twenty-seven and a half feet, more or less, to an alley, the southern line of said lot being parallel to its northern line, which is identical with the southern line of Pine street: said lot being bounded eastwardly by said Fifth street, southwardly by land formerly of George R. H. Clark, westwardly by the aforesaid alley, and northwardly by said Pine street, together with all erections on said lot, and whatsoever thereto appendent or appurtenant, or in anywise belonging: To have and to hold the same unto the said parties of the second part, and to their heirs and assigns forever.

And the said parties of the first part for themselves and their assigns, hereby covenant with the said parties of the second part and their assigns, to warrant and defend the above-described premises with the appurtenances unto the said party of the second part, and to their heirs and assigns forever, except taxes for 1869.

298 In testimony whereof said parties of the first part have hereto set their hands and seals the day and year first above written.

JOHN H. GAY. [SEAL.]
TRUSTEN POLK. [SEAL.]
JOHN HOGAN. [SEAL.]
JOHN KENNARD. [SEAL.]
WILLIAM C. JAMISON. [SEAL.]
CHARLES C. ANDERSON. [SEAL.]
WILLIAM H. MARKHAM. [SEAL.]
PHILIP M. LOCKWOOD. [SEAL.]
JOHN W. BURD. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that John H. Gay, Trusten Polk, John Hogan, John Kennard, John W. Burd, William C. Jamison, Charles C. Anderson, William H. Markham, and Philip M. Lockwood, who are personally known, each and all of them, to the undersigned, a notary public within and for the said county of St. Louis, to be the same persons whose names are subscribed to the foregoing and as parties thereto, this day appeared in person before me and severally acknowledged that they executed and delivered the same as and for their voluntary act and deed of them; that the same is the voluntary act and deed of & each of for the uses and purposes therein contained.

Given under my hand and official seal this twelfth day of November, A. D. eighteen hundred and sixty-eight.

[SEAL.] JOEL G. HARPER,
Notary Public.

Filed and recorded Nov. 21, 1868.

JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the within and foregoing is a true copy of a deed executed by the trustees of the Centenary Church of M. E. Church S., together with acknowledge-
299 ment, date of filing and recording thereof, as the same remains of record in my office, in book 365, p. 528.

Witness my hand and official seal this 31st day of January, 1871.

[SEAL.] W. C. KENNETT, *Recorder*,
Per A. TETARD, *Deputy.*

[5-c. rev. stamp attached.]

Deposition of Sullivan Blood.

Deposition of Sullivan Blood, taken before L. L. Walbridge, a notary public in and for the county of St. Louis, and State of Missouri, at the city of St. Louis, in said county and State, on the part of complainants, but read as evidence on the part of defendant.

SULLIVAN BLOOD, of lawful age, being duly examined, cautioned, and sworn, deposes and says:

Examined by Mr. Knox:

Q. State your name, age, and residence?

A. Sullivan Blood; I have lived at St. Louis 53 years next December.

Q. What is your business at the present time?

A. I am president of the Boatmen's Savings Institution; that is about all I do, and collecting some few rents.

Q. Has James H. Lucas any connection with that institution; and if so, what?

A. He is a member of the board.

Q. How long a time has he been a member of the board?

A. Well, I do not recollect when he was elected; he has been there ten years, I guess, at least.

Q. Do you know John F. Darby?

A. I do.

Q. How long have you known him?

A. I have known him about 50 years.

Q. What time, sir, did he suspend?

300 A. Well, as to dates, I cannot tell that.

Q. Did you know anything of his pecuniary condition previous to his going into bankruptcy?

A. Well, I knew he was a man that wanted a great deal of money all the time.

Q. How long did you know that fact?

A. Well, 2 or 3 years.

Q. How did you come to know the fact that he was in pressing need of money?

(Mr. Gantt objected as it assumes the witness has stated what he has not stated, and also as leading.)

A. I saw his notes on the street.

Q. Will you state whether or not his wants were imperative, or urgent, or otherwise?

A. Well, I can state as a general thing that he frequently made applications to us for money, and we frequently bought his notes on the street from brokers, and sometimes we declined buying them, and sometimes we did buy them.

Q. How long a time before his failure were his notes on the street in the hands of note-brokers?

A. Well, I do not know that I can state that, Mr. Knox; for several years, though.

Q. At what rates of discount?

A. Various rates, not less than ten per cent., sometimes more; I suppose they have been sold at 1¼ per month.

Q. How often were they sold, to your knowledge, at 1¼ per month.

A. Well, I cannot tell how often; they were frequently in the

301 hands of street brokers, Mr. Stagg, and two or three other brokers; I cannot tell particularly about it, other than we bought them sometimes, and sometimes we did not.

Q. Were these men that you call brokers, in a regular office, or what you call street brokers?

A. Street brokers, generally in the hands of street brokers; we always bought them when we had plenty of means and found good names on them.

Q. At what rates were they usually sold, as far as you know?

A. Well, I think a good deal of the time they were sold about 10 per cent. off—sometimes more.

Q. How big a shave have you known them to be subjected to?

A. Well, I cannot tell you now exactly; but sometimes they might have been sold at 1 per cent. a month off occasionally.

Q. Do not you know that your institution for many months before Mr. Darby's failure, purchased them at 1¼ and 1½ per cent. discount?

A. I won't say that I know it exactly; I should not be surprised if they did, but I cannot charge my mind now with it; the cashier generally done those things and generally reported them, and I would not be surprised if they did, but I would not say I know it positively.

Q. Have you any doubt of that fact?

(Mr. Gantt objected.)

A. Well, I do not think that they bought it as high as 1½ a month.

Q. 1¼?

A. I do not know that fact, positively.

Q. Are men in good credit in the habit of being in the hands
302 of street brokers for years?

(Mr. Gantt objected.)

A. Well, it is generally supposed when a man suffers his notes to go into the street that his credit is not so good as it ought to be; though sometimes good men get into the street.

Q. From the reputation of Mr. Darby as to his credit, did you form any opinion as to his solvency at any time before his failure?

(Mr. Gantt objected as incompetent.)

A. Well, sir, I always supposed Mr. Darby was worth a good deal of money, a good deal of property; that is to say, I had no idea that this house, (corner of 5th and Olive,) was encumbered when we were buying these notes; I had no idea that his property on Main st. was encumbered until this house was sold to Mr. Lucas; that is the first intimation I believe we had—I believe any of us. I know as far as I was concerned, and I know Mr. Hodgeman, the cashier, also, and myself, were perfectly surprised to see how much his property was encumbered.

Q. What time was that?

A. That is the time this house was sold to Lucas.

Q. At the time that Mr. Lucas made the purchase of the property, or before, did you hear the amount of encumbrance on it?

A. Not until after the sale was made, then I heard it was on this house; I did not know anything about the sale of the house only through Mr. Hodgeman. Mr. Hodgeman told me he was trying to sell this house to Mr. Lucas, and I do not know when the news come to us
that it was mortgaged for $150,000, which was what was on it; I
303 understood. I think, the sale had probably been made at that time.

Q. Was the solvency of Mr. Darby discussed in your board often?

A. Well, yes, it was occasionally.

Q. How long a time before his failure was it discussed?

A. Well, I do not know. I think the board thought as I thought up to the time of the sale of this house, that Mr. Darby had a good deal of property, and that he was a solvent man. I thought so.

Q. What was that opinion as to his solvency based on?

A. Well, I did not know that there was any encumbrance on his property. I knew he owned a good deal of property, but I had no idea it was encumbered. I never dreamed of such a thing at all, at any time, until I discovered that this house was mortgaged, then we began to enquire, and we found that there was encumbrances on his property, and then we began to doubt his solvency, of course.

Q. When you ascertained the fact of the encumbrances on this house, what opinion was formed in your board as to his solvent condition at that time?

A. I do not know as the thing was discussed particularly with us, and I do not know as I thought then but what he had something left, but he was not in as good condition as we supposed he was all along, by a good deal.

Q. What effect does a banker, permitting his paper to go into the hands of street brokers, have on his credit?

A. Well, I suppose everybody knows that it is generally supposed that it rather impairs his credit for his notes to go into the street.

Q. Does it put people on their inquiry as to his credit?

304 A. Well, I presume it does; it is thought injudicious for any man to let his notes go into the street, if he can help it, and it is generally supposed that it impairs his credit. I mean by that, where a man's notes are constantly seen in the street every few days. A man's note might get into the street accidentally; it might get into the street for sale; Colonel Gantt's or yours, or a good many others, and one instance of that kind we would not think anything of it, but where we should see them constantly in the hands of brokers for sale, of course it would impair a man's credit.

Q. When these notes of Darby's were received at your institution and endorsed, you knew who was the beneficiary and who received the proceeds?

WITNESS. Who was to receive the proceeds of those notes?

Q. Whether the endorser or maker?

A. Well, we supposed that it went to Mr. Darby.

Q. That it was accommodation paper?

A. Yes, sir; no doubt about it.

Q. What, in the opinion of bankers, is the inevitable effect where a man borrows money at 1¼ per cent a month for years, or for a year or two?

(Mr. Gantt objected as incompetent and irrelevant.)

WITNESS. What effect does it have?

Q. What effect must it have, in your opinion, on a man who has his paper for a year or two or more on the streets, at 1¼ per cent a month?

A. Well, of course the effect of it is that people are pretty hard up for money.

Q. Whether there is any doubt as to what it must result in if continued?

305 A. Well, continued for a long time it is very evident how it will result, but a man might probably do that for some time. Mr. Darby was a banker as well as ourselves, and we did not know what he was doing with his money.

Q. Was he doing a large or small business?

A. He was doing rather a small business; he had been doing a large business previous to that.

Q. How long previous to that?

A. Well, several years; when he was with Barksdale he done a pretty large business under the firm of Darby and Barksdale; after that his business was rather small.

Q. What became of that firm in 1867?

A. They stopped and made a kind of a failure, though I believe they paid off their liabilities.

Q. Was the failure for a large or small amount?

A. I do not know what amount it was; I have been frequently informed by Mr. Darby that he paid all their liabilities up. I do not know.

Q. Did Mr. Darby make a loan of the Boatmen's Savings Institution in October, 1868?

(Mr. Gantt objects as irrelevant.)

A. We had his note about that time for about $135,000 I think, for which we took bonds as collateral.

Q. What bonds were they?

A. St. Louis County bonds.

Q. Did you know how he obtained those bonds?

A. No; I do not know as I knew how he got them. In the first place we got them from the old bank. I do not know how he got them, at all. I do not know as I ever heard him say.

306 Q. Do you know how he paid for them?

A. Well, no; I do not know exactly how he paid for them; I think the money that he got from us was paid over to the old bank when we got the bonds.

Q. Well, sir; was not the money that was paid the old bank money that he borrowed temporarily to pay for the bonds that he purchased?

A. Well, I cannot say as to that; I presume it was.

Q. Was not that the basis of the application to your board for the loan?

(Mr. Gantt objected.)

A. I do not know that now; I do not recollect of his saying that; in fact he did not say anything to me about the loan. The loan was made through Mr. Hodgeman; Mr. Hodgeman submitted it to the board and we accepted it.

Q. How long was that under consideration by the board?

A. Well, I do not recollect at this time how long it was. I suppose it was not more than usual; generally when an application is made we sometimes decide at the first meeting, and may be it will lay over 2 or 3 meetings. I do not recollect about that.

Q. Do you recollect what time that loan matured?

A. No; I cannot now. I believe I stated that here once before, but I do not know as I can tell now. I got the time then from Mr. Hodgeman, the cashier, and it has passed out of my mind now.

Q. Where is Mr. Hodgeman?

A. He is dead.

Q. Dead, how long?

307 A. He died the 23rd of April last.

Q. Who was the most efficient and active man in the purchase of the notes to which I have referred, and in the making of the loan of the $135,000?

A. Mr. Hodgeman, the cashier, done all that business pretty much, generally speaking.

Q. Did your institution deal in exchange?

A. Yes, sir.

Q. Were you in the habit of buying Mr. Darby's exchange?

A. I do not think we bought Darby's exchange; in fact I do not know whether he offered any of late years. We used to buy it.

Q. If at any time you concluded not to buy it, state the reasons why your board concluded not to buy it?

(Mr. Gantt objected.)

A. I do not know when we declined buying it; I do not recollect the time.

Q. Had you bought any for years before his failure?

A. We had not bought any exchange for some time; I do not recollect what time.

Q. Did you buy any exchange at any time after his notes were on the street?

A. Well, I do not recollect exactly.

Q. Did you discuss the question, at your board, of the safety or otherwise of buying his exchange, at any time before his failure?

A. No; I do not know that it was discussed there; we left that generally to the cashier. The cashier generally exercised his judgment about buying exchange.

Q. How long a time before Mr. Darby's failure was it that
308 he offered his paper for discount himself?

WITNESS. Before his failure?

COUNSEL. Yes, sir.

A. Well, really, I cannot tell, Mr. Knox.

Q. What was generally the size of the notes that were in the hands of those street brokers on the street?

A. Well, they were generally $5,000. I suppose sometimes some $2,000; generally about $5,000.

Q. Was his paper scarce or plenty of that kind for years before his failure, in the hands of street brokers?

A. Well it was not so very plenty. We sometimes declined taking it, and sometime we did take it. I do not think his notes had been offered to us very plenty for a year or two before his failure.

Q. For how long a time before his failure were they offered plenty?

A. Some 4 or 5 years ago; three or four years ago they were offered pretty plenty, as near as I can recollect; I cannot recollect the time.

Q. Did you discount any paper for him after his paper was on the street?

A. I do not know as to that; you mean on his own application.

Q. Yes, sir?

A. We discounted that $135,000.

Q. I mean to say negotiable paper that was offered without security, only an endorser.

A. I cannot recollect whether we did or not. If Mr. Darby came
309 in with a good endorser, I presume we would take it; for instance such an endorser as Mr. Knox and Mr. Brotherton, and a few others.

Q. Was the transaction of Mr. Darby, with the bonds, a legitimate transaction, in your opinion, and the opinion of bankers, or not?

(Mr. Gantt objected.)

WINTESS. What do you mean by legitimate?

COUNSEL. Such a transaction as a prudent banker would make?

A. Well we thought about it amongst ourselves, and we thought we would not have bought them in that way; we did not see how he was going to make much money out of that, though brokers do things that we do not; we did not buy bonds hardly any time.

Q. How was that negotiation viewed by your board in your conversation about it, as that of a man who was hard pushed for money or trying to raise the wind, or as an ordinary business transaction?

(Mr. Gantt objected.)

A. I do not know as that thing was under discussion at all in our board; for my part, I supposed at the time, that he ought to make something on them, but I recollect of our talking about it, and we did not think he could make much on them before he got through.

Q. Was that talked of much among the members of the board?

A. I do not know that it was; it might have been mentioned.

Q. Was this paper that was bought, and thus came before your board for their action?

A. Sometimes it did, sometimes it did not. Mr. Hodgeman would

sometimes say, "Here's a note I bought," and he would show it to
310 the board, and the board would consent to it, and that was all; and I think sometimes he bought, and probably did not mention it to the board at all; but as a general thing it has to be submitted to the board, of course.

Cross-examined by Mr. Gantt.

Q. What names were usually upon Mr. Darby's paper that was purchased by your institution?

A. Well, Brotherton's name and Mr. Knox's, and it appears to me he had one or two other names; I cannot recollect who they were though.

Q. Was there any business connection at any time, to your knowledge, between Mr. Brotherton and Mr. Darby?

A. Well, I do not know that fact; I know that Mr. Brotherton and Mr. Darby had always been very great friends, and I think they used to do considerable business together, off and on.

Q. Do you know whether there was any business connection between Mr. Darby and Mr. Knox at any time?

A. No, sir; I do not know.

Q. Do you remember that they were ever in partnership as lawyers, Mr. Darby and Mr. Knox? } Objected to by plaintiffs.—All here objected to ruled out.—S. T.

A. Yes, sir.

Q. Did not the circumstance that Mr. Darby's paper was endorsed by Mr. Knox, and the intimacy and familiarity with Mr. Darby's affairs, which your board supposed Mr. Knox to possess, have a great deal with leading your board to the conclusion that Mr. Darby was a solvent man?

(Mr. Knox objected as incompetent.)

A. Well, I think it had some effect.

Q. Did not the indorsement, in like manner, of Mr. Dar-
311 by's *party* by Mr. Brotherton, whose familiarity and intimacy with Mr. Darby's affairs was known by the board—did not that lead your board to the conclusion that those gentlemen were acquainted with what they were doing, and that they considered Mr. Darby safe? } Objected to by plaintiffs.—All here objected to ruled out.—S. T.

(Mr. Knox objected.)

A. Well, I think I happened to meet Mr. Knox; the conversation came up about Mr. Darby; I asked Mr. Knox, I believe, about this way: Says I, "How good is Darby?" or something, speaking of his name. I had seen his, Mr. Knox's, name on Mr. Darby's paper, and Mr. Knox says, "Oh, well," says he, "He is as good as anybody; I know that, or else you would not see my name there;" that is near as I can recollect the conversation.

Q. Can you state where that was?

A. I cannot recollect the time; it was when they were building these houses up there, where I think I met him.

Q. What house?

A. Up, opposite Union market.

Q. Within the last two years?

A. Well, it might have been two years, and it might be more, I do not recollect.

Mr. KNOX. Those houses have been built more than three years.

WITNESS. I think it might have been more than two years, but it was there at any rate.

Mr. GANTT, (resuming.) You were asked what would be the inevitable result of a person's paying 1¼ per cent. a month for money for any length

of time. Did not the answer to that question depend very much on what he does with the money, of course. Suppose he makes 3 per cent. a month by it cannot he afford to carry on this business for a
312 long time?

A. Yes, sir; we did not know what Mr. Darby was doing when he borrowed the money at those high rates of interest; a man can afford to pay that sometimes and make money by it—I have no doubt of that.

Q. How long was it after this property was bought by Mr. Lucas *was it* that you heard of it?

A. Well, sir, I knew that Mr. Hodgeman was trying to effect the sale of the house probably a week or so before he did. The day he sold it or the day after he informed me he had sold it to Mr. Lucas. I never heard Mr. Lucas say a word about it one way or the other; I never heard him talking about buying it, or anything, until Mr. Hodgeman and he was trying to sell it to Mr. Lucas; after the sale he said he had sold it to him.

Q. Are you acquainted with the value of real estate in St. Louis?

A. Well, I do not know; I used to think I was, but I do not know but I may be behind the time.

Q. What is your opinion of the sale which Mr. Hodgeman made of this property to Mr. Lucas for Mr. Darby; do you think the price a good price or too little?

(Mr. Knox objected as incompetent.)

A. I thought it was a pretty fair price.

Ruled out. { And I believe most of the board did, except Mr. Hodgeman; Mr. Hodgeman thought it was cheap; we had divers and sundry controversies about it; I said it was a fair price for it; that the house was constructed in such a manner that it did not rent very well, and that it would have to be improved a good deal to have it rent well.

I thought it was a fair price.

313 Q. Mr. Hodgeman was selling it as Mr. Darby's agent?

A. Yes, sir.

Q. He was not selling it as the agent of the Boatmen's Savings Institution?

A. Oh, no; I do not think the Boatmen's knew anything about it, without it was me, for I had never heard it mentioned until Mr. Hodgeman told he was trying to effect a sale; I presume he expected to get some compensation for it.

Q. A commission for selling it?

A. Exactly.

Q. Do you know whether he attempted to sell it to anybody else?

A. No, I do not; I never heard him say he did.

Q. All you know about the matter you learned from Mr. Hodgeman?

A. Yes, sir; I heard very little of that until the sale was made; he kept it to himself; I do not know that he mentioned it to the board; I never heard the board mention it at all.

Q. You stated your board thought the price was good?

(Mr. Knox objected.)

A. I did.

Ruled out. { I believe Mr. Lucas did not consider it a very great bargain, and was perfectly willing to give it back for the $50,000 which he had paid.

(Objected to as incompetent.)

Q. Did you ever know of paper with Colonel O'Fallon's name on it to be in the hands of street brokers?

A. Well, it appears to me I have seen his name occasionally.

Q. Was not Colonel O'Fallon a man of great wealth, and always known to be so?

A. Yes, sir.

314 (Mr. Knox objected as incompetent.)

Q. Do you remember a person by the name of William Chambers who owned a good deal of property in North St. Louis in his lifetime?

A. I knew him, sir.

Q. Do you remember that his paper was ever on the street, in the hands of street brokers?

A. Well, I do not know that, Mr. Gantt; I don't know; that is before my banking days; I believe I heard something of the kind, but I do not know as I ever knew it.

Q. Did you know Isaac Walker?

A. Yes, sir.

Q. Was he a man of wealth or a poor man?

A. Well, he was supposed to be a man of wealth.

Q. How is the fact?

A. Well, he has left an estate; I do not know how much.

Q. Is he not considered a man of very large wealth?

A. Well, I do not know how large it is; he was thought to be all along very rich, but I think the estate did not turn out as well as a great many people thought it would; still I think there was a considerable estate left.

Q. Do you know or not know of his paper ever being offered for sale on the street?

(Mr. Knox objected.)

A. I do not recollect exactly now, but I think we bought it; I have seen it frequently. I have seen Colonel O'Fallon's; I know I bought a note once for $10,000, in the hands of John J. Anderson.

315 Q. Can you tell me is the market for real estate as active in St. Louis, and does real property bring as good a price now as it brought in 1868?

A. No, sir; I do not know as it does; I do not think it does.

Q. Did not it decline? Did not the price of real estate fall between 1868 and 1869? Was not it less in 1869 than in 1868?

A. I rather think it was; that is my impression.

Re-examined by Mr. Knox:

Q. Have you dealt in real estate any for the last 10 years?

A. Not a great deal, sir.

Q. Did you have any occasion to enquire as to the value of real estate in 1868 and 1869?

A. Well, I did; I kept myself pretty well posted up; I saw the sales in the papers every week.

Q. That was your means of information—the reports in the papers?

A. Well, a good deal; I heard the price talked about—the sales and offers made.

Q. Do you mean to be understood as saying that Colonel O'Fallon put his paper, for his own benefit, on the street?

A. I do not say that.

Q. That is what I ask?

A. No, sir; I do not say that; I say I have seen it, and bought it.

Q. Where he was the maker of the note?

A. Well now I am not certain about that, whether he was the maker or endorser.

Q. In relation to Isaac Walker, do you know of his paper being put on the street to be sold by street brokers, where he was the maker, and for his own benefit?

A. Well, I cannot say that; I thought it was; I frequently thought, when I saw it, that it was for his own benefit; I do not know
316 whether it was or not; you cannot always tell whose benefit it is for exactly.

Q. Was it endorsed paper?

A. I think I have seen it both ways; I think I have seen his notes with drawers and endorsed, both.

Q. Was his paper that you have seen offered for sale payable to the order of himself, or somebody else?

A. Well, I do not know; I do not recollect; I presume payable to somebody else.

Q. Those were merely casual pieces of paper, the one or two you speak of, not continuously on the street for years, were they—Colonel O'Fallon's, Walker's, and Chambers's?

A. Well, it was not so frequently as many others, of course.

Q. Was not it very rare to see such paper on the street?

A. Well, I have seen considerable of it on the street.

Q. Short paper or long paper?

A. Both ways, if I am not mistaken.

Q. How long ago were Darby and Knox in company or business?

A. Well, I suppose it must be 15 years probably—may be longer.

Q. Are you distinct in your recollection of having a conversation with me on 5th st., touching Darby's pecuniary condition within the last three years?

A. I think it was on 5th st.; I am positive as to having the conversation; I reported the conversation to the board the next day, too.

COUNSEL. I have not the slightest recollection of it.

WITNESS. I stated to the board the next day that I had had
317 a conversation with Mr. Knox about Mr. Darby's paper; I suppose the piece of paper came up at the same time; I merely happened to think about it, and mentioned it at the time, what you (Mr. Knox) said.

Q. How long ago was that?

A. I think it is 2 or 3 years; I do not think it is over 3; I think it is not 3—it might have been 3; I was thinking it was when you were building those houses; it was up there where I happened to meet you.

Q. Those houses were commenced three years ago this summer; were you buying his paper then at 1¼ per cent. a month?

A. We were buying it; I do not recollect at what rates.

Q. You knew it was on the street at that time?

A. Yes, sir.

Q. Did you intimate to me that Mr. Darby's paper was on the street at that time?

A. I do not think I said anything about it; we do not generally report people's paper on the street; we generally keep it to ourselves.

On page 19, (of original deposition,) where the witness says Mr. Knox said, "Oh, well," says he, " is as good as anybody; I know that, or

else you would not see my name there," witness wishes to correct it, as he does not remember Mr. Knox to have said, "Or else you would not see my name there."

S. BLOOD.

318 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a true transcript of the record and proceedings, and of the evidence used on the hearing in case No. 760, in equity, of Andrew Park and John K. Tiffany, trustees in bankruptcy of John F. Darby, bankrupt, against James H. Lucas, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 29th day of March, in the year of our Lord eighteen hundred and seventy-one.

[SEAL.[JOSEPH H. CLARK,
Clerk of said Court.

And afterwards, to wit, at a regular stated term of the circuit court of the United States for the districts of Missouri, begun and holden at the city of St. Louis, in said districts, on the first Monday, the third day of April, in the year of our Lord eighteen hundred and seventy-one, the following proceedings were had in said cause on Monday, the twenty-fourth day of April, in said last-mentioned year, to wit:

Hearing of cause submitted.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., complainant and appellant,
ag'st
JAMES H. LUCAS, DEFENDANT & APPELLEE.

Appeal from United States district court for the eastern district of Missouri.

319 This day come the parties, by their respective solicitors, the appellant by Messrs. Glover and Shepley and Samuel Knox, esquire, and the appellee by Thomas T. Gantt, esquire, and this cause having been brought on for hearing at the present term of this court, and the same having been fully heard, argued, and submitted to the court for a decree upon the record and proceedings in the district court of the United States for the eastern district of Missouri, and upon the cause as made out and presented to this court, and the court not being fully advised of and concerning the premises, said cause is by the court taken under advisement.

MEMORANDUM.—His honor Judge Treat did not sit or take part in the proceedings in said cause.

And afterwards at said regular stated term of said circuit court begun and holden as aforesaid, the following further proceedings were had in said cause, on Thursday the twenty-ninth day of June, in said last mentioned year, to wit:

Final decree.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C.,
complainant,
agst.
JAMES H. LUCAS DEFENDANT.

Appeal from district court of the United States, eastern district of Missouri.

This day come the parties, by their respective solicitors, the appellant by Mess. Glover and Shepley, and Samuel Knox, esquire, and appellee by Thomas T. Gantt, esquire, and this cause having been fully heard, argued, and submitted to the court at a former day of the present term thereof for a decree upon the record and proceedings in the district court of the United States for the eastern district of Missouri, and upon the cause as made out and presented to this court, and the court
320 being fully advised of and concerning the same:

It is now finally ordered, adjudged, and decreed, that the decree rendered in this cause, in the district court of the United States for the eastern district of Missouri, dismissing the bill of the complainant herein, be, and the same is hereby, affirmed.

And it is further ordered and adjudged that said appellant, John K. Tiffany, surviving trustee of the estate and effects of John F. Darby, bankrupt, pay the costs of the appeal of this cause from said district court, and that execution or a fee bill be issued for such costs.

MEMORANDUM.—His honor Judge Treat did not sit or take part in the disposition of said cause.

And at said regular stated term of said circuit court begun and holden as aforesaid, the following further proceedings were had in said cause on said last mentioned day, to wit:

Appeal allowed and bond approved.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C.,
complainant,
agst.
JAMES H. LUCAS, DEFENDANT.

Appeal from the district court of the United States, eastern district of Missouri.

This day comes the appellant, by his solicitors, Mess. Glover and Shepley and Samuel Knox, esquire, and prays an appeal to the Supreme Court of the United States, from the decree this day rendered by this court herein, and thereupon it is ordered that said appeal be allowed. And said appellant having presented his bond of appeal to the court said bond is approved and ordered to be made part of the record herein.

And said bond of appeal is in the words and figures following, to wit:

321 *Bond of appeal.*

Know all men by these presents that we, John K. Tiffany, surviving trustee of John F. Darby, bankrupt, & Sam'l Knox, are firmly bound

unto James H. Lucas in the full and just sum of one thousand dollars, to be paid to the said Lucas, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 29th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas, lately at the April term, 1871, of the circuit court of the United States for districts of Missouri, in a suit depending in said court between the said John K. Tiffany, surviving trustee of John F. Darby, a bankrupt, appellant, and James H. Lucas, respondent, a judgment was rendered against the said Tiffany as such trustee, and the said Tiffany, as such trustee, has prayed an appeal (to reverse the judgment in the aforesaid suit) to the Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Tiffany shall prosecute his appeal to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JOHN K. TIFFANY. [SEAL.]
SAMUEL KNOX. [SEAL.]

Sealed and delivered in presence of—

Approved by—

A. KREKEL, *Judge.*

322

323 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of John K. Tiffany, surviving trustee of John F. Darby, bankrupt, pl'ff, against James H. Lucas, defendant, as fully as the same remain on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office in the city of St. Louis, in said districts, this 15th day of August, in the year of our Lord eighteen hundred and seventy-one.

[SEAL.]

AUSTIN DRAKE,
Clerk of said Court.

(Endorsed:) United States circuit court, districts of Missouri. John K. Tiffany, surviving trustee of John F. Darby, bankrupt, against James H. Lucas. Duly certified transcript of the record and proceedings in the above-entitled cause.

(Endorsement on cover:) No. 572. John K. Tiffany surviving trustee of John F. Darby, bankrupt, appellant, vs. James H. Lucas. Missouri C. C. U. S. Filed 9th October, 1871.

JOHN K. TIFFANY,

Surviving Trustee of John F. Darby, Bankrupt, Appellant,

VS.

JAMES H. LUCAS.

UNITED STATES SUPREME COURT.

STATEMENT OF CASE,

BRIEF AND ARGUMENT OF APPELLANT.

JOHN K. TIFFANY, Surviving Trustee of John F. Darby, Bankrupt, Appellant,
vs.
JAMES H. LUCAS.

U. S. Supreme Court.

STATEMENT OF CASE.

This suit was instituted for the purpose of annulling a deed made by John F. Darby to James H. Lucas, bearing date April 24, 1869, but delivered April 26, 1869.

The bill charges that the deed to Lucas was made by Darby when he was insolvent, or acting in contemplation of insolvency, in order to prevent his property from being distributed in conformity with the provisions of the bankrupt law, that it was made in fraud of said law, and that James H. Lucas, on the day of the date of said deed, had reasonable cause to believe that Darby was insolvent, or acting in contemplation of insolvency, and that said deed was made for the purpose aforesaid. If said Darby were insolvent, or acting in contemplation of insolvency at the date of said deed, and Lucas had reasonable cause to believe as aforesaid, then the complainant contends that said deed was void, and that the title to the property conveyed should be vested in him for the benefit of the creditors of Darby.

The record shows that on the 17th day of June, 1869, at a meeting of his creditors, Darby was told that he must file his petition to be adjudicated a bankrupt, or that he would be forced into bankruptcy. On that day he discontinued his business, and on the 12th day of July, 1869, was duly adjudged a bankrupt.

The record further shows that Darby and Lucas and their families had lived in St. Louis for many years, and since 1841 had been on intimate terms. That Darby was a private banker prior to and up to the year 1857, when the firm of Darby & Barksdale, bankers, failed for a large amount. That subsequently, after 1861, Darby resumed the banking business. That during all this time the respective places of business of Lucas and Darby were not more than two blocks apart. Prior to 1857 Lucas was a private banker in St. Louis, and had been for many years. That for ten years prior to 1869, Mr. Lucas was a Director in the Boatmen's Savings Institution, was a President of the De Soto Insurance Company since its organization, was a gentleman of great wealth, and most familiar with matters of finance, and intimate in financial and banking circles. The testimony further shows that the father of Mr. Lucas once owned the property described in the bill of Complainant, that Mr. Lucas was a large owner of property in the vicinity, and that no man in St. Louis was a better judge of the value of the property than Mr. Lucas.

In his answer the defendant admits that Darby was in fact insolvent on the 26th day of April, 1869. He further states that he had no cause until long after the sale to believe that the same was made in fraud of said bankrupt law. The answer further states that he knew Darby had incumbered some of his real estate in furtherance of his business as a banker. The Court will observe that in the pleadings in this case the fact of insolvency as well as the intentions of Darby in making the conveyance complained of are not in dispute. The reasonable cause to believe said fact, on said 26th day of April, is the only question before the Court.

In his deposition, taken on his own behalf, Mr. Lucas testifies that on said 26th day of April he knew Mr. Darby was embarrassed; that his negotiable paper had for years been in the hands of street brokers for sale, (which he admits in the opinion of some persons is evidence of the bankrupt condition of the person whose paper is thus exposed for sale.) He further testifies that he was a Director in the Boatmen's Savings Institution, and that he knew that the Institution bought Darby's paper from street brokers for a long time prior to April, 1869, and up to that time. He further testifies that he knew Darby owned the property in controversy, and one lot on Main street, all of which property was incumbered.

In October, 1868, Darby borrowed of the American Life Insurance Co. of Philadelphia, $150,000, and secured the same on the property described in the bill. Mr. Lucas assumed the payment of this debt as a part of the purchase money when he bought of Darby. It is further in evidence that when Darby borrowed the above sum, $150,000, the property was incumbered to the amount of $145,000, all secured by deeds of trust on the property afterwards sold to Lucas. That $95,000 of this $145,000 had long been past due. The $20,000 deed to A. Duncan had been due for more than four years, and the $75,000, due the National Bank of the State of Missouri, had been overdue for months, and Darby had, from August, 1868, been trying to borrow the money to pay these overdue obligations. These deeds of trust were all satisfied on the 28th day of October, 1868, from the money borrowed of said American Life Ins. Co. The testimony shows that the investigator of titles for Mr. Lucas reported to him before he made the purchase, all of the incumbrances that had been on said property from the year 1849 up to April, 1869.

The testimony shows that for some years before his failure, Darby's paper was abundant in the hands of street brokers for sale, and that it was continually, for years, sold at from one to one and one-half per ct. per month. During the whole of this time the Boatmen's Savings Institution, where Mr. Lucas was a Director and large depositor, purchased Mr. Darby's paper of street brokers at the above rates; that Mr. Lucas well knew the fact, that the Boatmen's Savings institution had for four or five years positively refused

to discount Darby's paper, and would only buy it of street brokers at extortionate and illegal rates, and refused to buy his exchange. That for two years before his failure his solvency was often discussed in financial circles, and the opinion amongst financial men generally was that Darby was insolvent; that the usurious sacrifices to which he was subjected, and his extraordinary shifts for raising money, clearly indicated the ruin upon which he was rashly and rapidly rushing; that no Institution in the City of St. Louis had such an opportunity as the Boatmen's Savings Institution and its managers, of knowing the desperate condition of his affairs. The testimony shows that from $40,000 to $50,000 of his accommodation paper was almost continually out for several years, and much of it was purchased by this institution. It appears that four or five street brokers were employed to sell the paper for years, and that it was plenty at almost all times. There is no dispute in the testimony, that when a private banker puts his paper on the street for sale, that such a course puts all persons cognizant of this fact on inquiry as to his pecuniary condition; that such a course is extraordinary, and indicates the man to be in very straitened circumstances.

It further appears from the record, that when Darby embarked in the banking business he had no capital except $5,000, which he borrowed, and that he depended upon his deposits for his money. That six months prior to July, 1869, he could not pay checks as small as $150 until he went out and borrowed the money. That often his depositors drew on him and he was obliged to draw bills on the East to meet these checks, though he had no funds there against which he could draw, but he was compelled to sell his paper on the street in St. Louis at a great sacrifice, to meet these kiting bills. That for two years he had been endeavoring to sell his property to relieve himself from debt and to get out of his business, but without success. He becomes continually more and more deeply involved. That for twelve months before his failure he was afraid some person would force him into bankruptcy. That six months before his failure, Mr. Polk called upon him for $10,000 and he said he could not raise it, and if Mr. Polk pressed him he would break him. Mr. Boylan, another large creditor, was pressing him some for the payment of his demand.

During this time, Darby testifies that he wished to sell his property to protect his indorsers.

The testimony further shows that so general was the knowledge of Darby's tottering condition, that many persons were waiting to buy his property at a great sacrifice. Darby refused to put his property in the hands of persons whose business it was to sell real estate, but secretly told two parties that he was desirous of selling to pay his debts, but cautioned them to say nothing about it publicly, as it would injure his credit.

It further appears from the testimony, that at the time of his failure, and for many months previous, Darby owed to his depositors $170,000 and upwards, most of it payable on demand and bearing interest at the rate of ten per cent per annum. He owed from $15,000 to $16,000 as curator of the estate of a minor, $2,000 or more as trustee of Amy Johnson, and his negotiable paper sold by street brokers was outstanding to the amount of $50,000. In addition to this he owed more than $250,000 for borrowed money secured on real estate in St. Louis, which money had been borrowed years before. All his real estate in St. Louis (except one lot valued at $2,000, the title to which was in dispute) was incumbered for more than its value and for about $20,000 more than it could be sold for under the most favorable circumstances. The testimony shows that on some of the property there were three deeds of trust, and that the bankrupt had borrowed every dollar he could on said property.

The only means Darby had to meet all of these obligations, was $800 cash in New York, and the lot valued at $2,000, the title to which was doubtful, and some undeveloped mineral lands in various parts of the State.

The testimony further shows that for three years prior to July 1, 1869, Darby lost in his banking business from $25,000 to $30,000 each year. That in 1868 his interest account and commissions to aid him in borrowing money amounted to $40,000.

The above undisputed facts show the Court the desperate state of the bankrupt's affairs for years, and the notoriety of this fact amongst financial men and his certain inevitable ruin.

Under these circumstances Darby sells to Lucas the property described in the Complainant's bill for $200,000, $50,000 cash and a covenant on the part of the purchaser to pay the indebtedness of Darby to the American Life Insurance Co. of $150,000. Lucas joins Darby in the deed of the 26th of April, and there covenants to keep and perform all the covenants, stipulations and agreements in the deeds given by said Darby to secure said loan of $150,000. One of these covenants is one to keep the property in question insured in at least the sum of $100,000. The record shows that the $50,000 cash paid by Lucas was paid out by Darby within twenty-four hours after it had been received by him.

The testimony leaves no reason to doubt that the property described in said deed from Darby to Lucas was well worth $350,000 on the 26th day of April, 1869, when he (Lucas) purchased the same for $200,000.

In the summer of 1868 Mr. Darby was desirous of borrowing all the money he could borrow on the property afterwards sold to Mr. Lucas. Mr. Lucas, with others, was called upon in September, 1868, to value the property, and they then gave a written certificate that it was well worth $300,000, and the evidence further shows

that Mr. Lucas said about the same time the certificate was signed, that the property was cheap at $300,000. No witness but Mr. Lucas pretends that the property was not worth as much in April, 1869, as it was the September previous. The most experienced real estate dealers and best judges of property in St. Louis testify that the property was worth from $50,000 to $60,000 more in April, 1869, than it was in September, 1868. All witnesses for both parties (except an elastic witness for defendant, Mr. John G. Priest) agree that there is no more valuable lot in St. Louis of the same dimensions than the lot in question. Several witnesses value the naked ground at $3,000 per front foot, and the building was worth from $125,000 to $150,000. Mr. Lucas in his deposition testifies that he has no doubt that Darby had been offered $300,000 for the property.

The testimony does not admit of a doubt that the property purchased by Mr. Lucas, of Darby, on the 26th day of April, 1869, for $200,000, was at the time well worth $350,000. This property was sold by Mr. Hodgman, the Cashier of the Boatmen's Savings Institution. Mr. Lucas says Mr. Hodgman was the agent of Mr. Darby in said transaction. Mr. Darby testifies that Mr. Hodgman applied to him on behalf of Mr. Lucas to sell the property, and that Hodgman *urged* him to sell to Lucas for ***$200,000.***

The testimony further shows that Mr. Hodgman had ingratiated himself into Darby's confidence, and from the beginning of the year 1868 was well acquainted with Darby's tottering condition and of his impending ruin. Darby had told Hodgman of the incumbrances on his real estate in St. Louis, and of the necessity of his selling the same to pay his debts. From the facts the testimony shows Hodgman knew from Darby, it is manifest that he knew Darby to be insolvent eighteen months at least prior to July 1, 1869. Under these circumstances, with this knowledge, Mr. Hodgman, the Cashier of the Boatmen's Savings Institution, *whose place was dependent upon the vote and support of Mr. Lucas, a Director*, applied on behalf of Mr. Lucas to Darby to sell the property and urged him to sell at the ruinous sacrifice at which it was sold.

The testimony of James H. Britton, the President of the National Bank of the State of Missouri, (a witness whose deposition was taken by the defendant,) as well as the testimony of Sullivan Blood, the President of the Boatmen's Savings Institution, shows that Darby's solvency was for years before his failure discussed and questioned in financial circles and was discussed at the meetings of the Board of Directors of the Boatmen's Savings Institution.

The testimony further shows that in the month of September, 1868, Darby was the highest bidder for and purchaser of one hundred and fifty jail bonds of the County of St. Louis, each for $1,000; that at the time of the purchase he had no money with

which to pay for the same, but borrowed the money temporarily of said National Bank, and then on the 14th day of October, 1868, applied to the Boatmen's Savings Institution to discount his note for $135,000 at six months, to raise money to pay the National Bank for the money borrowed as aforesaid. This note was discounted at the rate of ten per cent per annum, was due and remained unpaid on the 26th day of April, 1869. The jail bonds were left as collateral security for the payment of said note of $135,000. The evidence shows that this purchase of the jail bonds was at the time regarded as hazardous and extraordinary, and such as no prudent man under the circumstances would have made.

The only property other than that heretofore referred to which Darby looked to, to enable him to pay his debts, were certain lead lands in Franklin County, which he had worked *without profit* for several years. These lands he had *tried for years* to sell without success. The testimony shows that over six months or more before his suspension he expressed the hope that he should be able to pay his debts *if he could obtain* $100,000 for these so called mineral lands for which heretofore he had been unable to find a purchaser.

Such in brief are the facts upon which the Complainant relies for a decree annulling the deed bearing date April 24, 1868, which was executed by a man hopelessly and irretrievably insolvent, and admitted by Defendant in his answer to have been so, and which conveyed the best and most valuable piece of property in St. Louis for three-fifths of its real value to one who was not only thoroughly acquainted with the value of the property but must have been convinced of the insolvent condition of one who, in a single transaction, would sacrifice $150,000 to save himself for a few short weeks from the bankrupt's doom. Upon the above facts this Court is asked to decide that the causes of belief were so reasonable to the grasping mind of Mr. Lucas, that he should not be permitted to speculate in one transaction at the expense of a bankrupt's creditors to the amount of one hundred and fifty thousand dollars.

The opinions of the District and Circuit Courts in this case and the reasons for the same may be found by reference to 1 *Dillon*, *pp.* 167 et seq.

Complainant alleges that the Court erred in its opinion and decree in this, viz:

1st. The answer admits that the bankrupt was insolvent when he sold to Lucas. The Court finds as a fact technical insolvency, when the whole testimony shows that the bankrupt was hopelessly insolvent for years before he filed his petition.

2d. The uncontradicted testimony shows that in October, 1868, Darby owed $145,000 secured on the property sold to Lucas, $95,000 of which was then long past due, and Mr. Lucas had positive and actual knowledge of these facts when he purchased.

3d. Of the $95,000 overdue in October, 1868, $75,000 was due the Bank of the State of Missouri, of which $25,000 was borrowed January 2, 1868, for sixty days, and $50,000 February, 1868, for six months; it thus manifestly appears that the money borrowed of said bank were only temporary loans, and that the bankrupt could not pay them until he borrowed the $150,000 October 28th, the payment of which was assumed by Mr. Lucas. It further appears that Mr. Lucas knew, months before the loan by Darby of the $150,000 was effected, that Darby was negotiating for the money which he finally obtained on the 28th day of October, 1868.

4th. Darby is not contradicted when he testifies that he borrowed $75,000 of the Bank of the State of Missouri to take up and pay paper indorsed for his accommodation. It thus appears that this insolvent banker, in January, 1868, makes a loan for sixty days, secured on real estate, to take up his indorsed paper; and that in the spring of 1869, he had more accommodation paper out than ever before, and Mr. Lucas had reasonable cause to believe these facts.

5th. Mr. Lucas admits, in his answer, the actual insolvency of Darby on the 26th day of April, 1869; he admits that he knew

he had encumbered some of his real estate in furtherance of his business as a banker. In his deposition Mr. Lucas testifies that he only knew that Darby owned one lot (which was on Main street) besides the lot he purchased; that he knew that Darby's paper was selling on the street, which he says some persons think is evidence of bankrupt circumstances; that he knew he was embarrassed and borrowing money; that he knew that the Boatmen's Savings Institution, where he (Lucas) was and had been for years a director, purchased the paper at a sacrifice. With all this knowledge defendant purchased the property of Darby without inquiring as to his financial condition. Complainant contends that, upon the answer and deposition of defendant *alone*, the decree should have been in favor of complainant.

6th. The testimony of Darby and his cashier Valle prove conclusively that Darby was not only hopelessly insolvent for two years at least before July 1st, 1869, but that for at least twelve months prior to that date he was contemplating not only insolvency, but involuntary bankruptcy. (See Record, pp. 48–9, 70–71.)

7th. Ever since the year 1867 Darby testifies that he was trying to sell his property to protect his indorsers (70). This shows an intent to disregard the bankrupt law and the rights of creditors for more than two years before he filed his petition.

8th. The extent of Darby's insolvency of itself is sufficient to raise the presumption that every person engaged in financial matters in St. Louis must have known of his failing condition. The fact that four or five street brokers, continually for years, had his paper for sale, raises the presumption that men engaged in banking business had notice of his failing condition. To pretend that one so deeply interested in finance, and so intimate in banking circles as Mr. Lucas was; did not have full knowledge of these facts, and that a banker thus straitened must soon fail, is to impute to Mr. Lucas a want of ordinary intelligence.

9th. From the testimony, it cannot be questioned that the property sold by Darby to Lucas for $200,000 was well worth $350,000. This fact, *alone*, should have put Mr. Lucas upon inquiry. In September, 1868, Mr. Lucas had stated, in writing and orally,

that the property was cheap at $300,000. The testimony shows this fact, as well as the fact that the property had increased in value before the 26th day of April, 1869, from $50,000 to $60,000. Under these circumstances, Mr. Lucas purchases for $200,000.

10th. The fact of insolvency being admitted in the answer, as well as proved by the evidence, complainant claims that the sale was *prima facie* fraudulent and void. The bankrupt was an insolvent banker. The sale of real estate was not in his usual course of business. The sale of the only piece of property the bankrupt owned in St. Louis, which was not encumbered for more than its real value, was not in his usual course of business. It was especially out of the usual course of business of any person to sell for $200,000 property well worth $350,000. The man who effected the sale was not a real estate dealer, but the Cashier of the Boatmen's Savings Institution, which was not a sale in the usual course of business. The sale was made to one who had certified, in September, 1868, that the property was well worth $300,000. The sale was a secret sale, and for this reason unusual. For each and all of the above reasons, the sale was *prima facie* void. It was, therefore, incumbent on Mr. Lucas to prove the sale to be valid. The court erred in imposing the burden of proof on complainant.

11th. The testimony proves that Mr. Lucas had reasonable cause to believe that Mr. Darby was insolvent, or contemplating insolvency, on the 26th of April, 1869. The complainant understands both the District and Circuit Courts so to find.

12th. The Court, in its decision, states that it cannot say that Lucas had reasonable cause to believe the sale to be in fraud of the law. Now complainant contends that if Darby were insolvent, or contemplated insolvency, and Lucas had reasonable cause to believe *this fact*, he must have had reasonable cause to believe that the deed was in fraud of the bankrupt law, as the necessary effect of the conveyance was to keep the property sold, or its proceeds, from distribution amongst the bankrupt's creditors. In other words, the Court shrinks from finding the direct logical sequence which necessarily follows from the facts already found.

13th. The law presumes a person to know whether he is insolvent or not. If insolvent in fact, any sale of property must be

made either to pay certain preferred creditors, or to keep the proceeds for his own use, and in either case the sale is void.

14th. The necessary effect of a sale by a man in insolvent circumstances, is to keep the property sold from the hands of the trustee or assignee. If such be the necessary effect, the law presumes the insolvent intended what naturally or necessarily follows from his act of sale. If the law raises this presumption, by parity of reasoning it must raise the presumption that a purchaser, who had reasonable cause to believe the seller to be insolvent, has also reasonable cause to believe that the insolvent intended the natural and necessary effect of said sale.

15th. In his answer defendant states that he had no cause, until long after the commencement of this suit, to believe that said sale and conveyance were made in fraud of the bankrupt law. Complainant contends that this is an admission that said sale and conveyance were in fact made in fraud of the law. It only puts in issue the reasonable cause to believe the fact at the time of said sale.

16th. The court falls into manifest error when it decides that it is not the duty of an insolvent banker, merchant or trader to go into bankruptcy, and that when in fact insolvent, a banker can sell to one who has reasonable cause to believe the seller to be insolvent, and such a sale is valid. Complainant insists that it is the duty of a banker, merchant or trader, when in fact insolvent, to go into bankruptcy. Any sale made by him is in fraud of the bankrupt law. Any person having reasonable cause to believe the seller to be insolvent, purchases at his peril. If he purchases within six months before the filing of the petition in bankruptcy, having reasonable cause to believe, etc., the sale is void.

JOHN K. TIFFANY, Trustee,
vs.
JAMES H. LUCAS.

In U. S. Supreme Court.
BRIEF AND ARGUMENT OF APPELLANT.

This is a bill in equity brought to set aside a deed from John F. Darby to James H. Lucas, dated April 24, 1869, and delivered April 26, 1869, for the reason that Darby at the time of said conveyance was insolvent, or acting in contemplation of insolvency; that Lucas had reasonable cause to believe that Darby was then acting in contemplation of insolvency, and that said deed was made in fraud of the bankrupt law.

Before discussing the facts as they appear in the record, I desire to call the attention of the Court to some adjudicated cases under the bankrupt law.

One question which has been much discussed is as to what constitutes insolvency?

Insolvency is decided in the following cases to be an inability to pay one's debts in the usual course of business. 12 Wallace, Toof vs. Martin, assignee; 4 Cush. 127, Thompson vs. Thompson; 7 Cush. 136, 139, Holbrook vs. Jackson; 3 Gray 594, Lee vs. Kelleman; 6 Allen 327, Bernard vs. Crosby; 11 Allen 505, Ve vs. McConnell; 1 Dillon 203, Toof et al vs. Martin; 1 Dillon 186, Rison vs. Knapp; 1 B. R. page 146, Mercantile National Bank vs. Truax et als; 2 B. R. 114, In re Gay, In re Wright; 2 B. R. 155, 2 B. R. 101, Nedsmuth vs. Tyler; 3 B. R. 92, Graham vs. Stork; 101, Scammon vs. Cole; 7 Blat. 262, Hardy et als vs. Binninger. In re Dillon et al, 2 B. R. 185; 1 Abb. U. S. 440, Driggs vs. Moon et als. In re Wells, 3 B. R. 95. In re Powell, 3 B. R. 4. In re White, 1 B. R. 84; 3 B. R. 54, Miller vs. Kegs.

Every person presumed to intend the necessary and unavoidable consequence of his act. In 3 Story's Rep. 551, Judge Story says, "Every man must be presumed to know and comprehend the natural result of his own conduct."

The language of the Court in the following cases is, "Whatever are the probable consequences of an act, the debtor will be presumed conclusively to have intended." 1 B. R. 10; In re Drummond; In re Black & Secor. 1 B. R. 81; In re Sutherland. 1 B. R. 140; In re Dillon et als. 2 B. R. 185; In re Wells. 3 B. R. 95. Farrin vs. Crawford et als. 2 B. R. 181; In re Silverman, 4 B. R. 173.

See also 2 B. R. 129, Houghey vs. Albin; 2 B. R. 131, Foster vs. Hickley & Sons; 3 B. R. 29, Ahl et als vs. Thorner; 2 B. R. 190, Brock vs. Terrell; 1 Dillon 203, Martin vs. Toof et als, 12 Wallace.

When a debtor is insolvent, any payment made by him to a creditor in full, must be so made with the intent to prefer. 3 B. R. 149, Driggs vs. Moon et als; 4 B. R. 114, Rison vs. Knapp. Also reported in 1 Dillon 203; 4 B. R. 158, Martin vs. Toof; 1 Dillon 203, 12 Wallace.

The intentions of parties are to be judged by the legal effect of their acts, 4 B. R. 1, Samson et al vs. Burton et als; 3 B. R. 124, Campbell vs. Traders Nat. Bank. By parity of reasoning, if one insolvent sells property he is presumed to do so in fraud of the bankrupt law, if he go into bankruptcy within six months after the sale, 1 Abb. U. S. 440, Driggs vs. Moon et als.

The acts, knowledge and *intentions* of the agent are in law the acts, knowledge and *intentions* of his principal, 3 B. R. 92, Graham vs. Stark et als; 4 B. R. 106, Beattie vs. Gardner. In this case Complainant insists that from Darby's testimony as well as from the facts and circumstances of the case, Hodgman was acting as the agent of Lucas.

The reasonable cause to believe referred to in the bankrupt law, means a state of facts or circumstances which would lead a prudent man to make inquiries. In re J. B. Wright, 2 B. R. 155; In re Arnold, 2 B. R. 61; 3 B. R. 52, White vs. Roferty; 1 B. R. 146, National Bank of Hastings vs. Troax; 102 Mass. Rep. 427, Fales vs. Howe; 3 B. R. 100, Scammon vs. Cole; actual belief immaterial, 102 Mass. 427.

When the facts and circumstances are such as to put a man of ordinary prudence on inquiry as to the debtor's solvency, a person purchases at his peril, 1 B. R. 169, Tuttle vs. Troax; In re Palmer, 3 B. R. 74; In re E. Meyer, 2 B. R. 137; In re Coleman, 2 B. R. 172; In re H. & Bro. 1 B. R. 163; Hunter et als vs. Deane, 2 B. R. 29.

If the sale be unusual in the time, place, or character, or quality, or in other respects, such facts are prima facie evidence of fraud. In re Hunt, 2 B. R. 166. The question is not whether the transaction is usual in the community, but whether it is in the usual course of business of the particular person making the conveyance. Rison vs. Knapp, 1 Dillon 187; also 4 B. R. 114, 3 B. R. 146, Collins et als vs. Bell et als; 3 B. R. 100, Scammon vs. Cole; 4 B. R. 158, Martin vs. Toot et als.

The words with intent, &c., are words with like import with the words, "Puts his estate into a course of distribution different from that prescribed by the act." 28 Legal Int. 124, Barnes vs. Rettem.

Motive and intent should not be confounded. Whenever a person intends to do a thing which necessarily defeats the act he in judgment of law knows, when he does it, that it will have that effect, he *must* intend it. 7 Blat. 262, Hardy et als vs. Binninger et als.

It is the duty of an insolvent banker or trader to go at once into bankruptcy. 3 B. R. 99, Hardy et al vs. Clark et als; 7 Blat. 262, Hardy vs. Binninger.

Was Darby insolvent on the 26th day of April, 1869, and to what extent was he insolvent? Darby testifies that on the first of May, 1869, (page 53), he had $40,000 accommodation paper. When he suspended he had about $50,000 (page 59) accommodation paper out (54) paying interest at the rate of 1¼ to 1½ per cent. per month. Witness could not state that his accommodation paper had not been in the hands of street brokers to the amount of $50,000 during the four years previous to his failure. In 1867 and 1868 he paid from $37,000 to $38,000 interest, and the commissions would make the amount $40,000 each year (54). The whole capital in his business was $5,000, which was borrowed (56), he paid interest as high as 10 per cent per annum on deposits (56) and issued certificates for the money payable on demand (57). "Very often a check would come in and Mr. Valle (the Cashier) would come and tell me we must sell some exchange, and I would tell him to draw a bill and sell it" (57). Nearly every note which I made seemed to find a lodgment in the Boatmen's Savings Institution, which "always got them through street brokers." "I had no direct discount with them I think for about four or five years" (57). "They would not discount my paper. I applied to them frequently" (58). The notes given by me to brokers I would usually find at the Boatmen's. I suspended the 17th of June, 1869. The amount of my liabilities to my depositors at this time "I think was about $170,000 or $175,000 (58). Mr. Polk had been pressing me for payment and also Mr. Boylan (59). As curator for Squeers I owed from $14,000 to $15,000 (59). Amy Johnson $2,000 to $3,000 (59). All the money I had when I suspended, both in New York and St. Louis, was $800 (60). All my real estate was incumbered except a lot worth from $2,000 to $3,000 the title to which was in dispute (60). I had no stocks or bills receivable that were good. On the 26th of April I owed $303,000, secured on my real estate in St. Louis (60). My real estate was all incumbered to the fullest extent possible (61). The loan I made of the

American Life Insurance Co., secured by deed of trust on the property in question, was made in October, 1868, to pay various loans amounting to over $145,000, secured on the same property (61). Hodgman, the Cashier of the Boatmen's Savings Institution, from the beginning of the year 1868 clear up to the spring of 1869, knew of all these incumbrances (62). The only chance I had to be relieved from my liabilities was to sell my property, my mineral land as well as property in town (62). "I wanted to sell it all to pay my debts." I had no means of paying my indorsed paper except to sell the property. I had been trying since 1867 to sell all my property. For six months before my suspension I discounted my rents (62). My accommodation paper increased towards the last. For the three or four years before I suspended I lost from $25,000 to $30,000 each year in my business (53). "I talked with Hodgman a good deal confidentially. I told him I wanted to sell my property and settle my debts and quit off everything (64). Before my suspension I was making no money, but I was trying very hard to get out of the business (65). There were a great many persons thought I was hard pressed for money, and that they could get the property at a great sacrifice (70). I wanted to know whether I could protect my indorsers, that was the only point, and in case a party should force me into bankruptcy that I should have means to protect those who would be innocently compelled to pay the money (70). This was a year before my suspension. I did not know but some fellow might file a petition to force me into bankruptcy (71). For the three years before my failure I neither lost or gained money by my mines" (71).

T. Polk testifies that all of the property owned by Darby on Main Street (which as Darby's testimony shows was all the property owned by him in St. Louis at the time of his suspension except a lot worth from $2,000 to $3,000) was incumbered for a far greater amount than the lots brought when sold (95, 96).

F. Valle, Darby's cashier and book-keeper from 1865 up to the time of his suspension, testifies that Darby was doing a small banking business for years; that for six months prior to his failure, his son Ben, about eighteen years of age, and witness, were his only employees at his banking house (45). "I thought he was much embarrassed for two years before his failure. I judged so from the appearance of his cash and the trouble he had in getting money." From the time I went into his employment, he was in the constant habit of raising money through street brokers (46). The checks drawn by his depositors were honored after some hesitancy; sometimes had to get the money to pay them. Darby had a very small amount of cash on hand at any one time. "I do not suppose $5,000 at any one time." Some five or six months before he failed I had to go to pay a check after banking hours at the Second National Bank. The check was for $150 or $175. During the last

year he was in business, ten or twelve checks were presented when we had not money to meet them. I know it plagued me very often a great deal. "It vexed me to think we had to put them off" (46). I was often asked for a year or two before his failure if he was not much embarrassed (47). Five or six months before his failure he was uneasy about Mr. Polk's calling for his money. He did not think he could raise the money to meet Polk's demand (47). He said that it would break him. His money on hand would not average over $5,000. Possibly he might have $5,000 to-night, and $100 the next night; the next day he might have $10,000, and it would be drawn out before twelve o'clock next day (48). He sold exchange on the East when he had no funds there, and then raised money to meet it. This he did a year before his failure (48). It became more common as early as the February before his failure. There was no entry on the books of the notes sold by street brokers. Very few active business men had deposits there. His capital was $5,000. Mr. Polk's certificates of deposit were payable on demand. They amounted to $40,000. Mr. Inge's certificates were also payable on demand (49). Polk called for $10,000; Darby said he did not know where he could raise it (49).

George C. Kehr, a street broker (41), testifies that for two or three years before his failure, Darby's paper was in the hands of brokers for sale; four or five street brokers had his paper for sale (41). The paper sold for twelve, fifteen and eighteen per cent, and one per cent commission to the broker. Paper that gets into the street seldom sells at ten per cent; kiting paper is always considered a high rate paper; bankers throw it on the street; it is considered kiting paper—"of course it is worth whatever a man can get for it."

Pausing in the midst of his argument in the Court, defendant's counsel, by leave of Court, read in evidence the deposition of Sullivan Blood, a resident of St. Louis for fifty-three years (161), and a President of the memorable Boatmen's Savings Institution for many years next prior to the 1st of July, 1869.

Witness testified that he had known Darby fifty years, and knew that he was a man who wanted a great deal of money all the time (162). For two or three years before he went into bankruptcy I saw his notes on the street, and we frequently bought his notes on the street from brokers at not less than ten per cent per annum, and at one and one quarter per cent per month. They were frequently in the hands of street brokers. We bought the notes when we had plenty of money, and when we found good names upon them. Men in good credit do not have their notes in the hands of street brokers. Darby's solvency was occasionally discussed at our board (163). I did not know that his property was incumbered until he sold to Lucas; when we found his property was incumbered we thought him to be insolvent. It impairs the credit of a banker to

have his paper go upon the street. It puts people on inquiry as to his credit. We supposed the notes we bought were for Darby's accommodation; no doubt about it (164). If a person has his paper on the street for a year or two, he must be pretty hard up for money; it must if continued result in insolvency. Darby was doing a small business. He made a loan in October, through Mr. Hodgman of our institution (165), and gave his note for $135,000 with jail bonds as collateral. We used to buy Darby's exchange, but not of late years. Three or four years before his failure his notes were offered to us pretty plenty by street brokers; I do not think they were offered very plenty for a year or two before his failure. We did not see how he was to make much money out of the purchase of the jail bonds; we would not have bought them in that way.

The following deeds were read in evidence, viz:

A deed from Darby and wife to Moss Prewett, dated June 20, 1866, to secure $23,000 and interest, secured on a portion of the property described in complainant's bill (pages 113, 114).

A deed from Darby and wife to Campbell and Dickson, Trustees, dated June 15, 1859, conveying a portion of the property in Block No. 116, being the same now in dispute to secure a promissory note for $10,000, payable in five years with interest notes.

Another deed between same parties as above, dated June 15, 1859, for another portion of the lot in Block No. 116, now in dispute, to secure the same amount as the last deed, payable at the same time—both of last mentioned deeds satisfied, of record June, 1866.

Another deed, same parties and same date as the last two deeds, for another portion of said Block No. 116, being a portion of the land in dispute, in this case to secure (119) same amount as last deed.

Deed from Darby and wife (page 121) to A. H. Henderson, Trustee, dated June 19, 1866, for part of same lot now in dispute in Block No. 116, to secure one principal note for $25,000, payable three years after date, and six interest notes released Oct. 28, 1868 (page 123).

Another deed by Darby and wife to C. K. Dickson, Trustee, dated May 5, 1866, for a portion of same lot as above to secure a principal note for $25,000, payable three years after date, with six interest notes (page 124) released October 28, 1868 (page 126).

Another deed from Darby and wife to C. K. Dickson, Trustee, for a portion of the lot in dispute in Block No. 116, dated Jan'y 2, 1868, to secure a note for $25,000, payable sixty days after date (page 127), due March 5, 1868, and released October 28, 1868 (page 128).

Another deed, by the same parties as last deed, dated Feb'y 28, 1868, for another portion of the lot in dispute in Block No. 116 to

secure two notes each for the sum of $25,000, payable six months after date, due August 28, 1868, and released October 28, 1868 (page 130).

Another deed from Darby and wife to Alexander Duncan, Trustee, for a portion of the lot in dispute in Block No. 116, dated July 1, 1859, to secure one principal note for $20,000, payable five years after date, and ten interest notes, which deed was released October 28, 1868 (page 148).

Another deed by Darby and wife to J. H. Lucas, dated April 24, 1869 (page 5), in which Lucas covenants to pay promissory notes secured on the property in question to the amount of $150,000, with interest notes, all dated October 28, 1868.

James H. Britton, Defendant's witness, testifies that he received the $150,000 loaned on the Darby building (page 100). Darby owed the bank of which witness was president $75,000 in the fall of 1868. I paid the note for $20,000 to Mr. Duncan [page 101.] "He (Darby) has been urgent in his demands for money since 1857. He applied to me to borrow money at numerous times since 1857 in every shape, during all the time he was hard pressed. I had the opinion during the whole time that he could not stand up under the pressure. He kept up longer than I supposed he would (page 102). His pecuniary condition was questioned in banking circles for two years before his failure." "To the best of my opinion, during the last two years Mr. Darby's condition has been talked of by bankers as very precarious. I have heard opinions expressed that it was only a question of time when he would go under" (103). I think ever since 1857 Darby's notes have been in the hands of street brokers pretty often (104). "I have had his paper offered to me at from one to one and a-half per cent per month" (105). Since 1857 every year his paper has sold on the street at that rate.

The above facts it is contended show the utter hopelessly insolvent condition of Darby for two years before his failure, and that his condition was well known, *must* have been well known to all men in St. Louis who were engaged in commercial and financial business during that time.

The next question to be considered by the Court is, whether James H. Lucas, on the 26th day of April, 1869, had *reasonable cause* to believe Darby to be insolvent or acting in contemplation of insolvency?

Mr. B. O'Reilly testifies that at the time he was investigator of titles to real estate in St. Louis (page 39) and in April, 1869, he made an examination of the title to the property in dispute for James H. Lucas. I think the certificate I gave Mr. Lucas contained a correct statement of all the incumbrances on the property from the year 1849 (page 40). The certificate must then have

informed Mr. Lucas that on the 28th day of October, 1868, Darby owed Alexander Duncan a note secured by deed of trust on the property in question for $20,000, payable five years from July 1, 1859, overdue more than four years when paid. Also two deeds of trust, one to secure a note for $25,000, dated Jan. 2, 1868, payable sixty days after date, and one dated Feb. 25, 1868, to secure two notes each for $25,000, payable six months after date, all three of said notes being for money borrowed of the bank of the State of Missouri (page 61); one due March 5, 1868, and the other two due August 28, 1868, and all paid October 28, 1868 (page 101). Darby then was insolvent in October, 1868, and Lucas had *positive* notice of it in April, 1869.

Mr. Lucas knew that Darby was trying to borrow $150,000 on the property in question in the summer of 1868 (page 29), and then gave his certificate of the value of said property to enable Darby to effect the desired loan (page 29) (74).

Mr. Lucas for a long time was a banker in St. Louis [page 151]. He was President of the De Soto Insurance Co. [page 104] and a Director in the Boatmen's Savings Institution in 1868 and 1869 [page 104]. The most of Darby's paper sold on the street for four or five years before his failure was bought by the Boatmen's Savings Institution, of which Defendant was a Director, for from one per cent to one and one-quarter per cent per month [pages 58, 66,] [162]. Complainant insists that Mr. Lucas is presumed to have known the dealings of the Institution of which he was a Director, with Darby. The character of those dealings show not only a reasonable cause to believe but creates an actual belief that Darby was insolvent.

Mr. Lucas testifies that when he made the purchase of the property in question he knew that Darby's paper was selling on the street, that some persons might think this to be an evidence that he was in bankrupt circumstances [148] [152–3]. I knew that Mr. Darby had the property [the property in dispute] and a lot on Main street when I made the purchase [150]. "I knew he had been embarrassed and borrowing money" [page 151]. He also testified that he knew the Boatmen's Savings Institution had bought Darby's notes for years. In his answer [page 8] he admits that he knew that Darby had incumbered his real estate in furtherance of his business as a banker. As he only knew that Darby had one lot on Main street and the lot in question [150], he must have known that all of Darby's City property was incumbered. If the property were incumbered in furtherance of his business as a banker, then Mr. Lucas knew that Darby's debts so contracted were not paid in the regular course of business, that is, that Darby was insolvent.

The Court is next, in deciding on the reasonable ground Mr. Lucas had to believe Mr. Darby to be insolvent, or to be acting in

contemplation of insolvency, to determine the value of the property sold by Darby to Lucas and the price paid.

What was the value of the property on the 26th day of April, 1869?

In September, 1868, for the purpose of enabling Darby to make a loan on the property, James H. Lucas signed a certificate that the property was well worth three hundred thousand dollars [page 74] [page 51]. Darby testifies that Lucas told him that he considered the property richly worth that, or cheap at that—$300,000—[page 50]; he considered the property cheap at that. Defendant's witness, Britton, testifies [page 105]: "I estimated the property as worth $300,000, and I think it is worth that now." On page 106 he swears that the property was worth more when he gave his deposition than it was when he gave the certificate. On page 99 he estimates it to be as valuable if not the most valuable piece of property in St. Louis. C. M. Newcomb on page 24, A. R. Newcomb on page 26, W. W. Ivory on page 29, John F. Darby on page 50, all testify that the defendant, James H. Lucas, and his witness, J. H. Britton, signed the above certificate, estimating the property in dispute to be worth $300,000, in September, 1868.

W. Leffingwell, in the real estate business for twenty-five years in St. Louis, testifies [74] that no lot in St. Louis was or is of more value than the property conveyed by Darby to Lucas; that said property was worth more by twenty per cent, on the 26th day of April, 1869, than it was the September previous [75]; the naked ground would have brought $3,000 per front foot [75].

Marcus A. Wolff, also an extensive real estate dealer for many years in St. Louis, corroborates the testimony of Leffingwell [79], and testifies that the property was worth from $50,000 to $60,000 more in the latter part of April, 1869, than it was the September previous; no more valuable lot in St. Louis than this [87].

Edward Wyman, a resident of St. Louis since 1843, and for years engaged in the real estate business, testifies that there is no property in St. Louis, the naked ground worth more than the ground in question, and that the property increased in value fifteen per cent between September, 1868, and April, 1869 (83). Witness, in reply to a question by defendant's counsel, testified that he did not think the building could be put up for less than from $130,000 to $150,000.

W. W. Ivory (page 29) testifies, in reply to a question put by defendant's counsel, that Mr. Lucas' estimate of the value of the property was a fair estimate (29); thinks the buildings worth $125,000 [page 31]; thinks it the most valuable lot in St. Louis. Its value was increased by the improvements between September, 1868, and April, 1869 (31).

Green Erskin, an extensive property owner in St. Louis, and a resident of that city since 1832, testified that the four corners of

Fifth and Olive Streets were the most valuable lots in St. Louis [86]. The naked ground is worth $3,000 per foot (86); the building on the lot in question could not be put up short of $100,000 in 1869. I thought last year I could very readily make the buildings pay ten per cent on $300,000, and I think so still [87]. It can be made to pay a net of ten per cent on $300,000. The property in question was of more value in April, 1869, than in the previous September. The best investment a man can make is in such property as this, and it is worth what it will give a net rent of six per cent on [94]. I know of property in St. Louis for which $3,000 per front foot has been refused (94).

Mr. Lucas testifies that the property is first class property [153]; used to think it to be worth as much as my Fourth street property. At one time it looked as if business was going to run off from Fourth street on to Fifth street, but Fifth street will come on in the long run, &c., &c. [153].

Defendant's elastic witness, Priest, [page 158] says that the property in question was worth as much in April, 1869, as in the previous September.

Defendant's witness, Britton, testifies the property on the corner of Fourth and Olive streets, 90 feet on Fourth by 58 on Olive, was sold on the 31st day of July, 1869, for $150,000 cash [page 98]. There were no improvements of value upon the lot. The Court will find that upon the above basis the lot sold reduced to square feet would make, with a depth of 127½ feet, the lot worth $3,500 per front foot.

The Defendant and Darby and their families had been intimate for about thirty years [51] [150]; their places of business for years only two blocks distant [52]; no person in St. Louis better acquainted with the value of the property than Mr. Lucas [52 and 53]. His father once owned the property, and Mr. Lucas now owns a large amount of property in the neighborhood.

Under these circumstances Mr. Hodgman, the Cashier of the Boatmen's Savings Institution, of which Lucas had for ten years been a Director, "applied to me [Darby] to purchase it, and came to see me on behalf and in the name of Mr. Lucas." "Before this I did not know that he wanted to buy at all [53]. This was a month or two before the sale."

The Complainant submits that there can be no doubt, from the evidence, that the property was in April, 1869, well worth $350,000.

Mr. Lucas, on the 26th day of April, 1869, purchased property well worth $350,000, himself the best judge of its value of any man in St. Louis, purchased for $200,000, the only property the bankrupt owned in St. Louis, to which he could look with the slightest hope of escaping from bankruptcy, and thus Defendant brought ruin upon his friends and his friends' creditors.

In his answer Mr. Lucas says he "knew Mr. Darby had incumbered some of his real estate in furtherance of his business as a banker" [8]. He admits that Darby was in fact insolvent when the deed was made [8], but denies [9] that until after the sale he had any cause to believe the sale was made in fraud of the bankrupt law. Mr. Lucas testifies [152]: "I think I felt a hesitancy in paying so much money at once," so the incumbrance was no objection in Mr. Lucas's mind to the purchase.

George Kehr testifies [42] Darby did not want me to press the property on the market; he did not want it known that the property was for sale, as it would affect his credit, and then "there would be the devil to pay" [42].

Mr. Lucas testifies he had heard that some person had offered $300,000 for the property [154.] It was generally understood that Brown had offered that [155]. See also page 68. On page 70 Darby testifies: "There were a great number of persons thought I was hard pressed for money, and that they could get the property at a great bargain." "I think this was about a year before my failure." It further appears that Darby's pecuniary straits were so great that he did not dare to publicly offer the property for sale, but quietly and secretly put it into the hands of a person not engaged in the purchase or sale of real estate. Complainants insist that a sale made by an insolvent private banker, under the circumstances of this case, is prima facie fraudulent and void. It was not made in the ordinary course of business of an insolvent private banker.

Mr. Lucas, through his friend Hodgman, purchased for a little more than half its value, the property in question, of a man hopelessly and irretrievably insolvent—of a man who would not permit the property to be offered openly, for fear that it would injure his credit—of a man who testifies that for a year a great many persons knew me hard pressed for money, and that they could get his property at a sacrifice—of a man with whom he had been well acquainted for thirty years—of a man who had been doing a small and unprofitable banking business for years—of a man, a small banker, whose place of business for years was but two blocks distant from his place of business—of a banker whose paper for several years had been in the hands of street brokers, constantly for sale, and for years had been purchased at the Boatmen's Savings Institution, at one and one quarter per cent per month—of a man whose real estate in St. Louis was known by Mr. Lucas to be weighed down with incumbrances—of a man who Mr. Lucas swears he knew was embarrassed, and borrowing money at usurious and extortionate rates—of a man upon whom the vampyres had feasted for years, and none more thoroughly gorged than the Institution in which he had the high honor of being a Director—of a man, a small banker, for whose end the sharks that had consumed and were consuming

him, were waiting for years in anxious expectation;—of such a man, the millionaire defendant, the friend of many years, the patient, waiting and watching friend, a friend who knew the value of real estate in St. Louis better than any other man; a friend who waited until the fruit was ripe and its owner passed that period, even to the very verge of decay,—this friend who, with an eye that never dimmed, watched and longed and waited, and finally clutched the long-coveted prize.

Under all these circumstances, with all these surroundings, with all this knowledge, with all these facts to put him on the inquiry, this millionaire friend, Mr. Lucas, without inquiring, buys through his friend and agent, Hodgman, (who urges the bankrupt to make the sale,) property which he knew was well worth $350,000 for $200,000. Purchased *secretly* of the Cashier of his Institution, within fifty-two days of the time Darby was told at a meeting of his creditors that he must go into bankruptcy; purchased property sold by this Cashier at a ruinous sacrifice, he urging the sale to his friend Lucas; sold by the Cashier who kept the doors of the shaving shop whose treasury he guarded, continually open to fleece the victim, and thus by illegal, unjust, extortionate and usurious gains, fill its capacious coffers; sold by the presiding genius of this peculiar institution, which for long and numerous years towed their distressed victims to the frightful precipice beneath which the awful chasm of bankruptcy was yawning; sold in a cautious, secret, unusual manner, for an unusual price, with unusual circumstances preceding and attending the sale; sold by a private banker almost devoured by sharks, a private banker upon whom Mr. Lucas's institution, like a death-angel, had for years flapped its deadly wings and put the stamp of final ruin and death; sold by a private banker, or rather by the ghostly skeleton of a private banker, out of the usual course of business of a private banker.

The question to be decided by the Court is, Had the defendant, on the 26th of April, 1869, the day on which he sealed the ruin of Darby, reasonable cause to believe Mr. Darby to be insolvent, or to be acting in contemplation of insolvency?

The Complainant insists that from the answer of plaintiff and his deposition, it is manifest that he had reasonable cause to believe Darby to be insolvent. From the answer and deposition it is apparent that Mr. Lucas knew that Darby had incumbered his real estate to a large amount; that he was greatly embarrassed, and that for a long time he had been dependent for money on merciless and insatiable usurers and extortionate loans. These facts alone were sufficient to indicate to Mr. Lucas the final ruin which was impending over Darby. These facts, taken also with the price and value of the property, left no room for doubt, that Darby must soon plunge into the yawning gulf of bankruptcy. The desperate condition of Darby's affairs on the 26th of April, 1869, is further man-

ifest by reference to page 47. The $50,000 paid was at once expended.

Add to these facts the notorious desperation of Darby's affairs, well known amongst all financial men in St. Louis; and to suppose Mr. Lucas to be in total ignorance, or rather to suppose that he did not *know* that Darby's failure was *inevitably sealed*, is at once to charge Mr. Lucas with a want of ordinary intelligence and sagacity.

If then Mr. Lucas had reasonable cause to believe Mr. Darby to be insolvent, or to be acting in contemplation of insolvency, the only remaining question for consideration is, Whether Mr. Lucas had reasonable cause to believe that said sale was made in fraud of the bankrupt law?

The *actual* belief of Lucas is immaterial; the *reasonable* cause is the only question to be discussed.

The law presumes that a man intends the necessary consequence or effect of his act. I think I might safely say that the law presumes that a man intends the *probable* consequence or effect of his acts.

The necessary effect of the sale in question was to prevent the property from going to the Trustee or Assignee, for sale and distribution amongst the creditors of the bankrupt. By the plainest principles of law, Darby must have intended, what the sale necessarily accomplished.

If Lucas had reasonable ground to believe Darby to be insolvent on the 26th day of April, 1869, he had reasonable cause to believe that the effect of the sale by Darby to him would be to keep the property from the Trustee or Assignee. In other words, Lucas had reasonable cause to believe that in said sale Darby intended the necessary effect and consequence of said sale.

It is thus apparent that Darby was *in fact* hopelessly insolvent when he sold to Lucas, and that Lucas had reasonable ground to believe the *fact*, as well as to believe that Darby intended to violate the spirit and letter of the bankrupt law. Even one *willfully* blind could not fail to see these facts.

It is believed that the bankrupt law was enacted for the purpose of compelling those who were unable to pay their debts in full, to go into bankruptcy, so that their effects may be equally distributed amongst their creditors. It is the duty of a banker, merchant or trader, whenever he is unable to pay his debts in full, to go at once into voluntary bankruptcy. If he fail so to do, he disregards a plain duty. If, with a reasonable cause to believe a debtor to be insolvent, one deals with him or encourages him to keep his effects from being distributed equally among his creditors, such a person does an illegal act, at his peril. If one deals with a person, having reasonable cause to believe him to be insolvent, by purchasing his

property at a sacrifice, or by driving a hard bargain with him, such a person willfully disregards and defies the bankrupt law, and should be subjected to its severest penalties.

On the 26th day of April, 1869, the evidence shows that John F. Darby was a private banker, for years doing a small and unprofitable business in St. Louis; for thirty years, James H. Lucas and his family had been intimate with Darby and his family; that their offices were but two blocks apart. Mr. Lucas was a man of great wealth, with great experience as a banker and in all financial matters; that he was continually mingling in financial circles, a director in some of the richest institutions in St. Louis; that for years Darby's financial condition was well known and was often spoken of in banking circles, and the opinion often and publicly expressed that he must fail; that at this time his real estate in St. Louis was loaded down with incumbrances (in some cases three deep) to the utmost extent; that these incumbrances were all of record; that the property when sold was not sufficient, into more than $16,000, to pay said incumbrances; that Darby owed as curator of a minor, $15,000 and upwards—to his depositors he owed $170,000; that his payments annually, for interest and commissions, was $40,000; that many times, for six months and more before his failure, he could not pay small checks on his bank—one check for $150 was not paid until long after banking hours; that he was in the habit of drawing and selling bills on the East without having funds there to meet the drafts, and would then submit to extraordinary shaves in St. Louis to meet these kiting bills; that his paper for some years had been continually in the hands of street brokers for sale at from one to one and one half per cent per month; that four or five brokers had the paper during these years, and that the same was plenty and was sold for what it would bring; that Mr. Lucas *in fact* knew that Mr. Darby was during all of this time being sacrificed by the harpies who were continually gnawing at his vitals; that for four or five years before his failure the coffers of his favorite institution, where he was a director and large depositor, were filled with the kiting paper of the bankrupt, and this institution was, with a merciless hand, wringing from its tortured victim his very life-blood, and filling its treasury with the illegal gains by means of which the little remnant of his estate slipped from the feeble hands of the expiring banker into the capacious vaults of the institution which had the double advantage of the advice and wise counsel of Mr. Lucas, as well as of his ample means. On the 26th of April, 1869, and thenceforward till the filing of his petition, Darby had $50,000 of accommodation paper outstanding; to meet this and all his other obligations, he had the sum of $800 only. Thus situated, under such circumstances, bankrupt, bewildered, deluded, surrounded by Shylocks who *had* devoured him, and by others who were *patiently waiting* to see if one drop more might not be squeezed from the

plucked and plundered victim, Mr. Lucas appears upon the scene, and puts the finishing touch by purchasing through his friend Hodgman, for the sum of $200,000, the best piece of property in St. Louis, proved beyond all cavil or doubt to have been well worth $350,000; and at one fell stroke sealed the final ruin of the bankrupt and blasted the hope of his innocent creditors.

If such a transaction can stand, then the bankrupt law is a farce, and a blot upon the statute book—a solemn lie, whose promises are like the dead sea fruits, that tempt the eye but turn to ashes on the lips.

Does not the sworn testimony of Darby and his Cashier, Valle, show conclusively, not only that he was insolvent, and acting in contemplation of insolvency, but that he was acting so as to enable himself to pay certain debts in preference to others? Does not this testimony show conclusively, that Darby was contemplating bankruptcy?

Darby testifies that he told Hodgman, "I wished to sell my property to see if I could not pay off my debts." "He knew this from the beginning of 1868." "I told him I wanted to sell all my property to pay my debts." "Since 1867 I had been trying to sell all my property, including mineral lands. I thought my property would pay my debts." "For two or three years my object was to wind up my business, to get it in a condition that I could stop." "I wanted to sell my property for enough to pay my debts. I thought that I could settle up my affairs if they would let me transfer my property to Judge Brotherton, and let me work on to pay my debts. I wished to know if I could protect my indorsers. This was a year before my failure. In case a party should force me into bankruptcy, I wanted to have means to protect my indorsers. This was in case some person should file a petition to force me in. With the $75,000 I borrowed of the Bank of Missouri, I lifted up most of my indorsed paper. In the fall of 1868 I paid Polk $10,000, and some afterwards. For three or four years before my failure, I lost from $25,000 to $30,000 each year in my business."

The Court will please bear in mind the apprehension of the debtor that some person would force him into bankruptcy, for a year before his suspension; his persistent efforts since 1867, to sell his property to relieve his indorsers; the $75,000 borrowed of the Bank of Missouri, for the purpose of paying his indorsed paper; the fact that the paper was overdue and unpaid for months in 1868, and the fact that at the time of his suspension, his indorsed paper was $50,000. The utmost hope that the sanguine debtor entertained was, that all of his property *might* sell for enough to pay his debts.

Mr. Valle testifies, that during the last year Darby was in business, ten or twelve small checks were presented for payment, and

were not paid until he could go out and borrow the money. Five or six months before his failure, he *was very uneasy about Polk calling for money.* He said he *did not think he could raise it, and that it would break him.* For two years before his failure, I was often asked if the old gentleman was not much embarrassed. Notes sold by brokers were not entered on the books. This was our usual way of doing business.

There then can be no controversy as to the fact that at least for one year prior to July 1, 1869, Darby was acting, not only in contemplation of insolvency, but also in avowed contemplation of bankruptcy.

What motive does he aver for selling his property? To raise money to pay his indorsed paper. This is a violation of the bankrupt law. Every sale made by him when insolvent, or while in contemplation of insolvency, was in fraud of said law.

An insolvent can have but two motives in selling his property. One with a view to hide the proceeds from his creditors for his own use; the other to use the money in payment of some of his debts. In neither case is the sale valid, as against creditors. The applying of the proceeds of the sale of property to the payment of certain debts, where there is not sufficient to pay all debts in full, is such a preference as the bankrupt law will not countenance.

From the testimony of both Darby and Valle, it is apparent that all of his financial transactions for a year or more before his failure, were in contemplation of insolvency, and with a view of preventing his property from being distributed under the bankrupt law.

The only question left for the Court to decide is, if at the time of the sale by Darby to Lucas, Lucas had reasonable ground to believe that Darby was insolvent, or acting in contemplation of insolvency.

Complainant insists that if Darby were insolvent, or acting in contemplation of insolvency, the sale was prima facie fraudulent and void.

First—The sale of a large amount of *real estate*, the best and only piece of property of value owned by the seller, was not a sale in the ordinary course of business of a *private banker.*

Second—The property was sold not by a real estate agent, but by the Cashier of an institution in which the purchaser was, and for ten years had been a director. This was not a sale made in open market, by a man engaged in the business of selling real estate.

Third—The circumstances show secrecy in the sale, and Kehr testifies that Darby was afraid it would ruin him if the property was offered for sale in the open market.

Fourth—The price paid for the property was insignificant compared with its value.

Fifth—The sale was made by an insolvent to a millionaire who knew that his grantor was embarrassed, borrowing money for years at usurious rates, his real estate weighed down with incumbrances,

and the purchaser makes no inquiry of *his* friend and agent, Hodgman, or any other person of Darby's financial condition.

Sixth—The sale was made to a man who knew that Darby's commercial paper was due and remained unpaid for months, in the summer of 1868, to the amount of $95,000.

For the above reasons the sale was prima facie fraudulent and void.

An attempt was made by the Defendant to determine the value of the lot sold to Lucas, by the production of two deeds, one made by the Trustees of the Methodist Centenary Church, to Roe & Copeland, dated October 28, 1868, for 64½ feet front on Fifth Street, by 127½ feet in depth, being at the corner of Pine and Fifth Streets, for the consideration of $142,000. The other a deed dated July 1, 1869, for a lot at the corner of Fourth and Olive Streets, containing 90 feet on Fourth by 58 feet on Olive Street, executed by Thomas A. Walker, to the National Bank of the State of Missouri. The price paid was $150,000 (page 98). Upon neither of the above lots were there any improvements of value, nor is there any evidence showing the value of a lot at the corner of Fifth and Pine Streets, compared with a lot at the corner of Fifth and Olive Streets. The lot on the corner of Fifth and Pine Streets, brought over $2,200 per front foot, while the evidence shows conclusively, that the naked lot at the corner of Fifth and Olive Streets, was well worth $3,000 per front foot.

The other lot referred to in Britton's testimony, at the corner of Fourth and Olive Streets, containing 58 feet by 90 feet, sold for $150,000, which would make its value (if it had the same depth as the lot sold by Darby to Lucas) more than $3,500 per front foot.

After a delay of many months, and long after the other testimony of the case had been taken, on the 30th day of November, 1870, Mr. Lucas produces a solitary witness, supposed to be equal to the emergency, Mr. John G. Priest.

Deeply impressed and greatly bewildered by the honor of giving his testimony on behalf of a speculating millionaire, he must have surprised both Mr. Lucas and himself by his testimony, which is incoherent, unintelligible, confused and contradictory. Besides it is in direct antagonism with Mr. Lucas in his deposition. In this case, Mr. Priest had the same part as Polonius in the play of Hamlet. The whole shape and coloring of his evidence were designed to benefit the Defendant, but is so wild and peculiar as to affect most injuriously the witness and the speculating Defendant. Such aid as can be derived from this source, such light as is shed on the case by the witness, may be found by reference to pages 157–8–9 of the printed record.

Mr. Priest testifies (page 157) he did not know what it would cost to erect the buildings on the lot sold to Lucas, or what the

building was worth. He further testifies (page 158) that there was not much difference between the value of the property between September, 1868, and April, 1869. During the past three years, central property in St. Louis had not been affected by the rise and fall of gold. Just after the war, in 1865–6, it was affected by this cause. Property on Fourth Street, from Chestnut to Washington Avenue, is worth more than property on Fifth street. Fourth and Olive street is worth fifty per cent more than Fifth and Olive street.

Mr. Priest thought the incumbrance on the property was in the way of the sale, as it was bearing eight per cent interest. Mr. Lucas, in his testimony (page 152), shows that it would have been very convenient for him not to pay so much money as $50,000. So the eight per cent was no objection. Besides, if an eight per cent loan, secured on *such property*, was an unusual loan, such fact would be additional evidence of Darby's want of credit.

Now Mr. Priest's testimony is in direct conflict with all the other testimony in the case, and does not agree with Mr. Lucas. In his deposition defendant says (153): "I look on it as first-class property, but I do not consider it worth as much as property that *I have* on Fourth street. I *used* to think it worth as much as I value the Fourth street property at now. At one time" (undoubtedly this was on the 26th day of April, 1869) "Fifth street looked as if business was going to run off of Fourth street, but we find it is changed—but Fifth street will come out in the long run," &c.

Now Mr. John G. Priest has ventured a sworn opinion as to the value of the lot in dispute, swearing that he knew nothing of the value of the buildings—the value of which is established to be from $125,000 to $150,000—has testified that a lot thus improved was only worth $200,000, when the evidence must satisfy any mind that the naked ground was well worth $3,000 per front foot; has testified that land on Fourth street was worth 50 per cent more than land on Fifth street, while it is evident from Mr. Lucas' deposition, that when he purchased he believed the Fifth street ground the most valuable.

Mr. Priest thus stands in isolated solitude amongst the witnesses in this case, giving the *whole value* of his uncorroborated testimony, delivered after a long incubation, as a voluntary contribution to the speculating Crœsus who, Complainant avers, has wronged the creditors of the bankrupt act of more than $150,000. Such brilliant testimony must be rather the result of the imagination than of the judgment. This is fairly inferable from the character of the testimony, its conflict with other testimony, and from the fact that no other witness was found who would venture such extraordinary opinions.

Complainant respectfully calls the attention of the Court to the opinions of the District Judge Treat, and the Circuit Judge Dillon,

in this case, and submits that the decisions are at variance with the decision in the case of Rison vs. Knapp, in which Mr. Justice Miller concurred, as well as directly in conflict with the decisions in other Districts and Circuits before referred to.

By reference to 1 Dillon, page 31, Bean vs. Brockmier, it will be seen that the Court there held that a volunteer speculator, or purchaser, is to be regarded with less favor than a *creditor* who obtains a preference from an insolvent.

With a view to apply the principles above set forth to the case of Darby's Trustee vs. Lucas, the Complainant has made the above references.

By reference to 1 Dillon, page 167, the Court will see the opinions of Judge Treat and Judge Dillon reported at length.

The District Judge, apparently conceding that Darby was insolvent and that Lucas had reasonable ground to believe this fact, makes use of the following language: "Now if for the sake of argument it were admitted that defendant knew Darby to be technically insolvent, still the second element (to wit, that Darby intended to contravene the bankrupt law) would have to be proved, without which the highly penal provision of Sections 35 and 39 are not applicable.

The language of Judge Dillon in the above case, on page 168, is: "It quite satisfactorily appears, that at the time of the sale Darby did not contemplate insolvency." The Judge goes on to say: "But it is clear also that he was technically if not really insolvent at the time the deed was made."

Now Mr. Darby is not contradicted upon the question of his insolvency, or of his contemplating insolvency. He testifies that Mr. Polk (to whom as the evidence shows he owed $40,000, payable on demand) was pressing him for payment as early as the fall of 1868. Boylan, to whom he owed $16,000, was pressing his claim. Mr. Darby further testifies that "about a year before I went into bankruptcy, I wanted to know something about the bankrupt law. I wanted to know whether I could protect my indorsers, that was the *only* point; and *in case a party should force* me into bankruptcy, that I should have means to protect those who would be innocently compelled to pay money." "I wanted to see if I could not protect my indorsers in case some parties should force me in. I did not know but *some fellow might file a petition* to force me in. I kept trying to pay my indorsed paper."

Darby's Cashier, Valle, testifies that a dozen times within six months before his failure, he could not pay checks when presented. He owed over $170,000 to depositors, most of it subject to sight checks, while the money on hand would not average $5,000. Darby told Valle, "that Mr. Polk wanted $10,000. He said he did not know where he could go to get the money, that he should

have to hurry round to see if he could not raise the money. He did not know how he could raise it."

"Five or six months before his failure, I knew he was quite uneasy about Mr. Polk calling for his money." His apprehension was, that he did not think he could raise the money to pay Polk. "He said it would break him; that if he could only sell his mineral lands for $10,000, he could meet these things."

There is no testimony in conflict with the above testimony of Darby and his Cashier. The learned Judge Dillon must have *wholly overlooked* the above statements when he says that it quite satisfactorily appears "that at the time of the sale Mr. Darby did not contemplate insolvency."

What is meant in the two opinions above quoted by the words "technically insolvent," is not apparent. When in addition to the above facts, the evidence shows that Darby owed hundreds of thousands of dollars, with scarcely a remnant or vestige of money or property with which to pay, and that in October, 1868, he owed $95,000, long overdue, secured on the property purchased by Lucas, by deeds of trust duly recorded, of the existence of which Lucas had both legal and actual notice. Mr. Lucas testifies further, that these incumbrances were placed upon the property in furtherance of Darby's business as a banker.

It can hardly be supposed that when the Court say "that Darby was 'technically' if not really insolvent when the deed was made," that the Court should have been cognizant of the above evidence. It must have wholly escaped the attention of the Court when the opinion was written.

There can be no controversy then as to the fact of Darby's insolvency. That he was not only hopelessly insolvent, and contemplating insolvency, but contemplating *actual bankruptcy*, for a year prior to July 1, 1869, as proved by both Darby and Valle. That this continued up to the time of his suspension, is equally apparent. Polk's claim, as well as Boylan's, unpaid; small checks for $150 with no money to meet them; kiting bills on the East with no money; the hands of street brokers crammed with paper indorsed for his accommodation; banking circles all agreeing for more than a year that he must fail; with all these facts proved, complainant does not comprehend the meaning of the Court when it speaks of "technical insolvency," or of Darby not contemplating insolvency. In this connection, the attention of the Court is called to the fact that Darby testifies that he was trying to sell his property in order to pay his indorsed paper.

We have seen that Mr. Lucas testifies that he only knew that Darby owned one piece of property in St. Louis, besides the one described in his deed. The Court says, "he was generally believed to be possessed of considerable wealth and property." Now S. Blood testifies that he *had* supposed that Darby had considerable

property; that he did not know that the property purchased by Lucas was incumbered, till about the time of the sale; that he was surprised at the amount of the debt. When I knew of the incumbrance on his property, I thought him to be insolvent. Now *Mr. Lucas*, as the evidence shows, *knew* of these incumbrances. Then *Mr. Lucas* had *no* reason to believe that Mr. Darby was possessed of considerable wealth and property. Defendant's witness, Britton, once alluded to the wealth of Darby, but on having his attention called to a deposition taken a year or two previous, he was compelled to admit that Mr. Darby's insolvent condition was known and discussed in financial circles for years. In fact, Britton proves Darby's insolvency, and a general knowledge of it amongst business men. No other witness speaks of Darby's property, and *where* the Court found the evidence to warrant the declaration, "He (Darby) was generally believed to be possessed of considerable wealth and property," Complainant is at a loss to know. It does not appear in the record. There is *no* evidence indicating any such general belief.

Not only does the Court in its opinion speak of a general reputation of wealth and property, but of his "known energy and integrity," "the nature of his business," "the Defendant's want of any intimate familiarity with the exact state of Mr. Darby's affairs, and his ignorance of any change in them and their conditions," and adds that the Court cannot say that Lucas had reasonable cause to believe, &c., "and the Court is content to affirm the decree below."

Now the Court will find no reference made to Mr. Darby's "energy and integrity," except in the testimony of defendant when he is trying to relieve himself from the *consequences* of his rash speculation.

The arduous labors of the Circuit Court at the term when this decision was given, probably caused the Court in its opinion to speak of Mr. Lucas' want of any intimate knowledge of Darby's affairs, when if the Court had had sufficient time to examine the evidence, it would have found that Mr. Darby, Mr. Lucas and their families had been intimate for more than thirty years; that for many years their places of business were near together; that Lucas knew that Darby had great difficulty in 1841 in paying his debts, but finally saved some of his property at that time; that he failed in 1857 for a large amount; that he was a private banker doing a small business for years; that his paper was for years continually in the hands of street brokers and hawked about the streets, which, Mr. Lucas being the judge, is evidence of a man being "in bankrupt circumstances," and S. Blood being the judge, puts *all persons* on inquiry as to the condition of a man thus situated. The further fact which Lucas is presumed to know, and admits that he did know, that the banking institution of which for many years he was a director, shaved the bankrupt's paper without mercy; and the fur-

ther fact that Lucas testifies that he knew that Darby's real estate was incumbered and he embarrassed,—if these uncontradicted facts do not show a sufficiently intimate knowledge on the part of Lucas of Darby's affairs, for all the purposes of this case, then complainant is at a loss to determine what amount of knowledge would be requisite.

It further appears, from the decision of the learned Judge of the District Court, that the sale of an insolvent banker, on the eve of bankruptcy, of the only available piece of property he owned, for about one half its value, through the private agency, not of a real estate dealer, but of the Cashier of an institution who well knew the bankrupt's condition,—a *secret sale*, made *because* the banker feared that the offer in the *open market* would affect his credit, was a sale in the usual course of business of an insolvent private banker. From this opinion the Judge of the Circuit Court does not dissent.

Complainant further submits, that the opinions of the Judge of the Circuit Court as to the object of the bankrupt law, and the duty of an insolvent banker under said law, as well as the duty of those who have dealings with the insolvent, do not harmonize with the opinion of Mr. Justice Miller, in the case of Bean vs. Brockmier, above referred to.

The Court below distinctly states that a banker who is *in fact* insolvent, may proceed to sell his property as he may choose; may sell to a person who has reasonable cause to believe him to be insolvent, and such a sale is valid.

Complainant insists that the bankrupt law makes it the duty of a merchant, trader, or banker who is in *fact* insolvent, to go into bankruptcy; that if, when he is *in fact insolvent*, he continues his business and sells his property to one who has reasonable cause to believe him to be insolvent, both parties act at their peril; these acts are in fraud of the bankrupt law.

The law presumes a man to know whether he is insolvent or not. If he be insolvent *in fact*, then a sale of his property must necessarily keep the property sold from being distributed under the bankrupt law. If such be the natural effect or consequence of such sale, then the law presumes the bankrupt intended such consequences. If the purchaser had reasonable cause to believe the bankrupt to be insolvent, then the law presumes that he had reasonable cause to believe he intended by his act of sale the natural or necessary consequence of said act.

If an insolvent sell under the above circumstances, he must sell either to apply the proceeds of such sale to pay some preferred creditors, or for the purpose of keeping the proceeds for his own use. In either case the sale is void, if the purchaser had reasonable cause to believe the seller to be insolvent.

Assuming a banker to be insolvent, then no sale made by him can properly be said to be *fairly* made. The act is fraudulent on

his part, and if the purchaser has reasonable cause to believe the seller to be insolvent, the sale is void.

The District Judge held that the sale was "not out of the usual course of business."

Complainant submits that the sale of real estate is out of the usual course of business of a private banker, and is especially out of the usual course of business of an insolvent private banker, for the reasons stated elsewhere.

The Judge of the District Court held that the inference is natural "that the officers of the Boatmen's Savings Institution thought Darby good, or it would not have bought his paper." The evidence shows that the most of his paper, indorsed for his accommodation, was bought for four or five years by this Institution. President Blood testifies, that for *any person* to have his paper in the hands of street brokers for sale, impairs his credit, and causes persons to inquire as to the solvency of the maker. He further testifies, that when he knew Darby's real estate to be incumbered, (which fact Lucas had long well known,) he doubted Darby's solvency. This Institution had refused to discount Darby's paper, in a regular way, for four or five years, except at exorbitant and illegal rates of street brokers, all of which, we are told, is evidence that the managers of this *shaving shop* had an exalted opinion of the bankrupt's pecuniary condition. Such evidence of solvency is not generally thought to be reliable. In fact, it is believed that this is the first time that such an opinion or inference has ever been hinted at in any Court and it will be regarded as quite novel to men engaged in matters of finance. President Blood testifies, that the effect of such transactions is to destroy credit. He further testifies that the paper was purchased on the *credit* of the *indorsers*.

By reference to Defendant's answer, it appears that the fact of Darby's insolvency is admitted, as well as that after said sale the Defendant had cause to believe that the said sale and conveyance were made by the said John F. Darby with a "view to defeat the object of, or impair, hinder, impede or delay the operation or effect of, or to evade the provisions of the bankrupt law." The deposition of Lucas taken long after the answer was filed, is not altogether so full and satisfactory as his answer, as to the above facts. If the Court below had not overlooked the above admissions, it is hardly probable that it would have been "content" to affirm the decree of the District Court and dismiss the bill, or that it would have referred to the "technical insolvency of Darby."

I desire to call the attention of the Court again to the testimony of Mr. Lucas. He does not intimate anywhere that he had not reasonable ground to believe, when he purchased, Darby to be insolvent, or that the property was not conveyed by him in fraud of the bankrupt law.

The only places in his deposition where he alludes to Darby's solvency are in reply to the question "whether he had any knowledge or intimation that Mr. Darby was in bankrupt circumstances"? The reply is, "No, sir; none whatever. I had no intimation from any quarter, except if it should be that a man's paper is selling on the street, and some persons might think that is an evidence; but I know, from my own experience, that a man may sell his paper on the street at a great sacrifice, and still not be broken by any means."

In another place he speaks of Darby's financial troubles in 1840, and his failure in 1857.

Again, in reply to the question put by his counsel, "State if you had confidence in his solvency also"? The answer is, "I had, I assure you; it never occurred to me otherwise. I knew he had been embarrassed, and borrowing money, but some of the best men in town indorsed for him, who were said to be perfectly good—stood by him, and I suppose knew more of his business, and would not have done it, if they had not known that they were justified in so doing."

The above is a full and complete statement of every thing Mr. Lucas says upon the subject of Darby's financial condition, up to the 26th day of April, 1869. So much of the replies as are in direct response to the questions, are clearly quite immaterial. "No sir, none whatever," has no bearing on the issue, as well as the reply, "I had, I assure you; it never occurred to me otherwise." The remainder of both answers show conclusively that Mr. Lucas had *reasonable cause to believe* Darby to be acting in contemplation of insolvency, and that the conveyance was in fraud of the law.

The Court cannot fail to observe that *neither* of the *questions* proposed to Mr. Lucas by his counsel, touching Darby's financial condition, is *competent* or *relevant* to the case before the Court. Whether Darby was in "bankrupt circumstances" or not, or whether Mr. Lucas "had confidence in his solvency also," are questions altogether foreign to the issues in this case. If the counsel had deemed it *safe* to sound the conscience of his client as to the *reasonable cause of belief*, he would undoubtedly have done so, and would have propounded questions which might have elicited answers which might have some bearing upon the case. The failure to enter upon the inquiry of the *reasonable cause*, is a significant suggestion of the danger apprehended from such a coure of inquiry. I commend this sage prudence to the consideration of the Court.

I am unwilling to leave the question of technical insolvency without again calling the attention of the Court to the uncontradicted evidence.

It appears from the bankrupt's testimony, that for years prior to July 1, 1869, he was a private banker in the city of St. Louis;

that in the year 1863 he commenced business on a borrowed capital of $5,000, intending to carry on his business on his deposits; that for years he owed his depositors more than $170,000, most of which was subject to sight checks. During the whole time, his Cashier, Valle, testifies, that his cash on hand would not average $5,000. Darby testifies that from 1867 he had been trying to sell *all* his property to pay his debts. He was trying all the time "to get in a condition in which to stop as soon as I could get the thing in a condition to stop" (57); to wind up his business. For three or four years he had lost from $25,000 to $30,000 each year in his business, thus becoming more and more deeply involved, desirous the whole time of selling his property to pay his indorsed paper, and finally suspending with more indorsed paper out than ever before; unable to pay sight checks for small amounts; with next to no money at any time for years, to pay his depositors; struggling against hope for years, and only kept alive by the tender mercies of the remorseless cormorants that were consuming him; looking back with a shudder continually upon the bankruptcy he had just escaped by immense sacrifices; trembling at the bankruptcy which day by day stared him in the face, and shrinking with agony at the inevitable bankruptcy which must soon engulph him; financial ruin and death stamped indelibly on him in the past; the death-angel hovering over him every moment; the dart already on the *string*, and directed with an unerring aim; financial ruin and death before, behind and around him; all these circumstances, we are told, indicate, perhaps, "technical insolvency," and produce such a state of "content," not to say satisfaction, in the mind of the Court as to induce an affirmance of the judgment of the District Court.

By reference to the record it will be seen that nothing therein contained indicates the existence of any such facts as the Circuit Court assumes, as rendering the judicial mind "content" to affirm the judgment of the District Court. On the contrary, the uncontradicted evidence shows the actual non-existence of each and every fact, the *assumed* existence of which *alone* produced that "content" of mind which resulted in the judgment from which Complainant has appealed to this Court.

If Mr. Lucas had a knowledge of such facts as should have put him on inquiry as to Darby's pecuniary condition, and the knowledge of the fact that his favorite banking institution had feasted for years on the illegal gains derived from the purchase of the bankrupt's paper of street brokers, and a knowledge of *these facts* did not satisfy him of the failing condition of his friend, he might by reference to the records of the County, have seen the incumbrances on the bankrupt's property for years before his failure, to a greater amount than the value of the whole property, except that which he purchased. If not satisfied with such knowledge, Mr. Lucas well

knew that the law of Congress required private bankers to make monthly returns to the Collector, verified by affidavit, showing, among other things, the capital invested, the amount of deposits, &c. If with such information Mr. Lucas had remained in doubt of the hopeless condition of his friend's affairs, nothing but a miracle would have satisfied him. In fact, a miracle itself might be wholly insufficient to enlighten one so *willfully* blind.

In addition to all of the above facts, it appears from the deposition of Darby that "There were a great number of persons thought I was hard pressed for money, and that they could get the property at a great sacrifice," for a year prior to July 1, 1869.

For a year before he went into bankruptcy, Darby testifies, "I knew so little of the bankrupt law, I wanted to know something about it. Whether I could protect my indorsers, that was the only point; and in case a party should force me into bankruptcy, that I should have means to protect those who would be innocently compelled to pay money." I wanted "to see whether I could do that, in case some parties should force me in." "I did not know but some fellow might file a petition to force me in."

"I kept trying all the time to get up my indorsed paper." In addition to this fact Darby told his Cashier that if Polk pressed him for $10,000, it would break him.

The record shows conclusively then, that on the 26th day of April, 1869, Darby was hopelessly and irretrievably insolvent; that for a year previous he had not only contemplated insolvency, but had in fact contemplated bankruptcy, and was in a condition for more than a year prior to that date to be forced into bankruptcy. When, under these circumstances, a grasping speculator lays his hand upon the only valuable piece of property the bankrupt owned, and for about three-fifths of its real value, takes from Darby's creditors their only hope for realizing any considerable portion of their honest debts.

The Court will determine whether speculation thus attempted shall prove successful, or whether even-handed justice will wrest from the rash and grasping millionaire his long-coveted prize, and place it where the bankrupt law intends property thus acquired shall be placed, in the hands of the officers of the law, for the benefit of the victims of misplaced confidence.

SAMUEL KNOX,

One of the Solicitors for Complainant.

The Court will please excuse the recapitulation of Complainant's argument.

First. It is admitted by defendant's answer, as well as proved beyond all controversy, that John F. Darby was insolvent on the 26th day of April, 1869.

Second. It is claimed by the Complainant that the sale of real estate was out of the usual course of business of the bankrupt (who was a private banker), and that the sale to Lucas was *prima facie* fraudulent and void for the reasons assigned on pages 21 and 22 of Complainant's brief.

Third. It is contended that Hodgman was acting as the friend and agent of Lucas in the purchase. Hodgman was the cashier and chief manager of Mr. Lucas' bank; his place was dependent upon the vote of Mr. Lucas. Darby testifies that he had no intimation that Lucas wished to purchase "till Mr. Hodgman came to me in the name and in behalf of Mr. Lucas. Before this I did not know that he wanted to buy it at all." All the circumstances of the case show that Hodgman was the instrument of Lucas in this purchase; that Hodgman had wormed himself into the confidence of the bankrupt; that for more than a year before his failure he knew Darby to be insolvent. If Hodgman were the agent of Lucas, the law presumes that Lucas knew what Hodgman knew.

Fourth. It is contended that Lucas knew Darby to be insolvent in the autumn of the year 1868, when the bankrupt's paper, secured on the property sold by him to Lucas to the amount of $95,000, was long overdue. It is further contended that when Lucas admits that he knew Darby's real estate to be encumbered for money borrowed to be used in his business, that Darby, a private banker, had continually for years put his negotiable paper in the hands of street brokers for sale; that he was all the time embarrassed and borrowing money at usurious and ruinous rates; that for years the Boatmen's Saving Institution had refused to discount his paper at legal rates, and had *refused* to buy his exchange; that these admitted facts concede a reasonable cause to believe Darby to be acting in contemplation of insolvency. The Court will bear in mind that in his deposition, Mr. Lucas testifies that the fact that a man having his paper in the hands of street brokers for sale, is evidence to the minds of many persons that such a man is in "*bankrupt circumstances*," and that Mr. Lucas' friend and witness, S. Blood, testifies that for *any person* to have his notes in the hands of street brokers for sale, puts all persons on inquiry as to the solvency of a man whose paper is so offered.

Fifth. Mr. Lucas purchased at such a price as to indicate to him that Darby must soon fail, the price paid not being quite three-fifths of the value of the property purchased.

Sixth. The notoriety of Darby's hopeless condition among

financial men, is proved by the defendant's witness, Britton, as well as by the depositions of Blood and Lucas.

Seventh. Complainant insists that if Darby were in fact insolvent, or were contemplating insolvency on the 26th day of April, 1869, the sale was fraudulent on his part. If it were out of his usual course of business, it was *prima facie* fraudulent and void. If not out of his usual course of business, and Lucas had reasonable cause to believe Darby to be insolvent, then the law presumes that he had reasonable cause to believe that Darby made said sale in fraud of the bankrupt law, as the necessary effect and consequence of said sale was to keep the property sold, or its proceeds, from distribution in accordance with the provisions of said law. We have seen that the law *conclusively presumes* that a person *intends* by his act the necessary effect of such act. By a parity of reasoning the law *must conclusively presume* that a man who has reasonable cause to believe a person who offers his property for sale to be insolvent, has reasonable cause to believe that by such act the insolvent intended what the sale would actually effect.

Eighth. Complainant calls the attention of the Court particularly to the fact that the various deeds, read in evidence, show that all of Darby's real estate in the County of St. Louis (except the lot in controversy and one lot valued at $2000) was encumbered in the autumn of 1868, and for years before, for a much greater amount than the value of the property; that the evidence shows that Darby had borrowed all the money he was able to borrow; that in the summer of 1868 he owed for money borrowed, secured on the property sold to Lucas, $145,000—$95,000 of which was overdue; that he applied to W. W. Ivory, in the *summer of* 1868, to borrow money, and wished to borrow every dollar he could on this property (page 29); that the valuation, as fixed by Lucas and others, was of the *whole property together;* that when the loan was in fact made, the amount was divided into three sums—one for $60,000, one for $50,000, and one for $40,000—each of which was secured on separate portions of the property (as shown by the deed on pages 4 and 5). It thus appears that at the time of said loan Darby borrowed all the money he could borrow, divided the amount into several sums, secured by separate deeds, evidently intending by such a course, to sell the equity of redemption as he might be able, and thus continue business with his property under his control, until he was totally devoured by the avaricious plunderers who had destroyed him. It further appears that the bankrupt shrunk from carrying out his purpose, through the well grounded apprehension that a sale, lot by lot, to meet his necessities, would arouse the fears of his creditors, and cause them to compel him to do what the law made it his imperative duty to do. To blind his creditors, without regard to the wrong done or law defied (page 42), he places the property for sale in the hands of a

person not engaged in the selling of real estate, with the injunction of caution and secrecy, "for fear his credit might be affected, and then there would be the devil to pay," and authorizes the sale of his equity of redemption in the *whole property*, showing conclusively by such a course not only his own purpose, but showing also, to all who might negotiate for the property, his manifest attempt and intent to disregard and defy the bankrupt law, by disposing of his estate in his own way, for his own purposes, without the slightest regard to his legal or moral obligations, and in proud contempt for and defiance of his wronged and injured creditors. It seems that Mr. Lucas was the only man who would risk the chances of a speculation under such circumstances.

Ninth. In his answer defendant states that "he had no cause, until long after the commencement of this suit, to believe that the said sale and conveyance were made by the said John F. Darby with a view to defeat the object of, or impair, hinder, impede or delay the operation or effect of, or to evade the provisions of the bankrupt law."

Complainant submits that this is a clear admission by defendant that the sale was *in fact* made for the purpose of contravening the bankrupt law. The denial is *only* of the reasonable cause to believe the fact *when* the defendant purchased. If this be so, then there is no issue as to the *intent* of Darby, and the judgment is based upon a *supposed* issue not made by the pleadings, and upon the supposed *non-existence* of a fact which is charged in the bill and admitted in defendant's answer. The decision of the Circuit Court thus presents the most extraordinary anomaly, of a judgment negativing a fact alleged in the bill, admitted in the answer, and proved by the evidence.

When to all this is added that both the District and Circuit Courts found certain alleged facts to be *proved* which raise the *conclusive* presumption of the existence of the fact, the *supposed* and *assumed non-existence* of which caused that placid "content" under which the decree in this case was rendered, it is thought that complainant may be excused for extreme surprise that a cause so wholly inadequate and insufficient should have resulted in a "content" which has worked such injury to the bankrupt's creditors.

Before concluding the argument I desire to refer to the language of the Circuit Court in its opinion as reported in 1 Dillon, page 169. The Court says: "We cannot say that the defendant had reasonable cause to believe Mr. Darby's purpose in selling was to evade or defeat the bankrupt law, *and on this ground we are content to affirm the decree below.*" Again, on page 168, the Court says: "The District Court dismissed the bill on the ground that upon the proofs it did not appear that Darby intended to contravene the bankrupt law."

Neither the District or Circuit Court, in the opinions rendered and reported, pretend that Darby was not insolvent, or that Mr. Lucas had not reasonable cause to believe *this fact*. Both opinions are based upon the mistaken idea that a man is not to be presumed to *intend* the necessary effect of his act, as well as upon the strange opinion that a speculative purchaser of a person known by him to be insolvent, has not a reasonable cause to believe that the debtor intended by his act of sale what it necessarily accomplished.

It is thus manifest that in both courts the decisions turned on the purpose of Darby in making the sale. In other words, both courts admit the existence of facts established by the evidence in the case, which by the plainest logical sequence entitle the complainant to the relief asked, but shrink from applying in this case what the District Court (on page 167) is pleased to call the highly penal provisions of Sections 35 and 39.

It thus appears that an extreme reluctance to enforce a statute which imposes a penalty upon one who disregards and defies its provisions, has so dimmed the judicial vision as to prevent the applying of a simple logical sequence, and has produced "*content*" where law and justice both required that a decree should have been rendered in conformity with the prayer of complainant's bill. The facts found show the accused to be guilty, but the order for execution is withheld.

SAMUEL KNOX,

One of Complainant's Solicitors.

IN THE

SUPREME COURT

OF THE UNITED STATES,

ON APPEAL FROM THE

CIRCUIT COURT U. S. FOR MISSOURI.

TIFFANY, Surviving Trustee of DARBY,
Appellant,

vs.

JAMES H. LUCAS,
Appellee.

Levison & Blythe, Printers, 219 Olive street St. Louis.

IN THE

SUPREME COURT OF THE UNITED STATES,

ON APPEAL FROM THE

CIRCUIT COURT U. S. FOR MISSOURI.

TIFFANY, Surviving Trustee of DARBY,
Appellant,

vs.

JAMES H. LUCAS,
Appellee.

The bill in this case sets forth that Darby, while insolvent and in contemplation of bankruptcy, and within 6 months of the filing of his petition to be declared a bankrupt, did, on the 24th of April, 1869, by deed of general warranty, convey to James H. Lucas the property at the corner of 5th and Olive Streets, St. Louis, having a front of 75 feet on Fifth Street, by 127 feet on Olive Street, for $200,000. That this consideration was made up of the assumption, by Lucas, of an encumbrance for $150,000 (bearing 8 per cent interest) and $50,000 in cash: and that Lucas, at the time, had reasonable cause to believe that Darby was insolvent and in contemplation of bankruptcy, and that the deed was made to defeat the operation of the bankrupt law. That the property conveyed was worth more than $300,000—that Darby sold it for less than its value, and that Lucas knowing and taking advantage of Darby's necessities, and in order to aid him to defraud his creditors, purchased it at a greatly inade-

quate price. That certain interest notes on the encumbrance were nearly due at the time of the sale, and that Lucas, well aware of Darby's condition, deducted the amount of these from the cash payment, knowing that Darby could not pay them. The bill closed with a prayer that the conveyance to Lucas be declared void, and the title to the property vested in the trustee of the bankrupt for the benefit of his creditors.

The answer denied any knowledge on the part of Lucas of Darby's insolvency or contemplated bankruptcy, and denied that Lucas had, at the time the deed was made, any reason to suspect that Darby was insolvent. It alleged that the purchase was made in good faith, without any fraudulent design whatever, and particularly denied the transaction imputed to him respecting the retaining out of the cash payment of the amount of interest notes then about maturing. It denied that the property was worth $300,000, and averred that it was not worth more than the price for which it was sold. That the property was offered for sale to Lucas by Darby's agent in the regular course of dealing and business. That negotiations were commenced and carried on for several weeks between that agent and Lucas. That in the interval several proposals made by said Darby's agent were declined by said Lucas; and finally Lucas placed the value and estimate of two hundred thousand dollars upon the property and offered to give therefor that sum and no more. That the property was at the time encumbered with a lien for $150,000 bearing 8 per cent. interest, payable semi-annually on the 28th of April and October; and the said Lucas proposed to assume the payment of this sum at maturity, together with the interest accruing thereon after 28th April, 1869, and to pay to Darby the balance of $50,000 in cash; that Darby should pay the interest accruing in April, 1869, and also the taxes for the year; and that the said Darby and wife should give therefor to the said Lucas a sufficient deed of general warranty; that Darby for some time insisted that Lucas should pay the taxes for 1869; but Lucas was inflexible, and finally Darby assumed to pay them. The sale was then consummated; Darby and wife conveyed to Lucas by deed of general warranty; Lucas paid $50,000 in

cash without abatement, and assumed the payment of the $150,000 when it became due, with interest in the mean time at 8 per cent, Darby assuming the payment of the interest maturing 28th of April, 1869, and also the taxes of the year. Lucas denied the averment in the bill that he deducted from the cash payment to Darby the amount of this interest; on the contrary, he paid over to Darby, on the 26th of April, 1869, the full amount, relying without suspicion or doubt on Darby's ability and good faith to perform his engagements. After Darby's failure, which took Lucas completely by surprise, he inquired, for the first time, whether the April interest had been paid, and found it had been. But later in the year he was compelled to pay the taxes, amounting to $2,814.37½, Darby being unable to perform his covenant to discharge them. At no time prior to Darby's failure did Lucas entertain any doubt as to his solvency. He had no cause or reason to believe that Darby was insolvent or in contemplation of insolvency, and no suspicion or reason to suspect that he contemplated either taking the benefit of the bankrupt act, or evading its provisions. That the property was not worth $300,000 to any one at the time of its sale to Lucas; two hundred thousand dollars was all that it was worth, and all that Lucas ever considered it to be worth; that the transaction was, in all its particulars, fairly conducted on the side of Lucas (and, as far as he knew, on Darby's side likewise) with perfect openness and good faith, without a shadow of suspicion or cause for suspicion of any matter calculated to impede its consummation.

At the trial were read, on the part of the plantiff, several depositions and proofs, directed to the establishment of the following propositions, viz.:

1. That in the month of October, 1868, when Darby was negotiating for the making of a loan for $150,000 on the property in suit, Lucas signed a paper declaring it to be worth in his opinion the sum of $300,000.

2. That if the property was, in point of fact, worth $300,000 in October, 1868, its value had been increased before April, 1869, by the commencement of valuable buildings on neighbor-

ing lots, particularly at the opposite corner of 5th and Olive streets.

3. That, in point of fact, the property in question was very valuable: one of the most valuable lots in the whole city of St. Louis, and was worth much more than $200,000.

4. That Darby had been in straitened circumstances for a long time before his failure, and that all his property in St. Louis was encumbered; that his paper, endorsed by Judge Brotherton and S. Knox (one of the counsel for plantiff), was in the hands of street brokers, and was sold on the street for what it would bring: and that this had been the case for years before 1869.

5. That some of this paper was bought by the Boatmen's Savings Institution, a bank of which Lucas was a director.

On the part of the defence were read depositions and proofs directed to the establishment of the following propositions, viz.

(*a.*) That the meaning of the certificate signed by Lucas (and also by Britton & Dickson) respecting the value of the property in question, was only that it was regarded as ample security for the contemplated loan of $150,000, and that when these valuations were made for the purpose of a loan, and the lender only contemplated lending 50 per cent of the whole value, the practice of appraisers was to be very liberal in these valuations (p. 106 of the printed record. Testimony of J. H. Britton).

(*b.*) That so far from the property having been more valuable in April, 1869, than in October, 1868, by reason of the commencement of improvements near it, the immediate effect of these improvements, which were commenced in January 1869, was to incommode and embarrass the property.

(*c.*) That the price of real estate was, for various reasons, less in 1869 than 1868 in St. Louis, one of these reasons being the apprehension of a speedy return to specie payments.

(*d.*) That the property in question, though valuable, was far less so than land on 4th street, with which the witnesses of plaintiff had compared it: that the property had been in the market some time, and that Lucas was the highest and best bidder, and had given a full price for it.

(*e.*) That though Darby owed a good deal of money, it was

in permanent loans, amply secured by real estate, presumed to be encumbered only to the extent of from 50 to 60 per cent of its value, and that he was the owner of some of the best property in the city.

(*f.*) That the energy and resources of Darby were well known and highly esteemed by all: that he had been in pecuniary difficulties before, and had successfully struggled in 1857 against enormous losses, paying them all with ten per cent interest, and that no one but himself and his clerks knew that his situation in 1868–9 was precarious.

(*g.*) That the backing he received from Judge Brotherton and Mr. Knox, both of them men of prudence as well as wealth, and both of them more familiar with his affairs than any person outside of his banking house, contributed powerfully to the belief in his solvency.

(*h.*) Finally, that his failure took by surprise all except those who were intimately familiar with his private business, and that from first to last Lucas had no suspicion, or cause for suspicion, of his insolvency, but acted throughout with the most perfect good faith.

In the progress of the argument, reference will necessarily be made, in detail, to the testimony offered on either side. For this reason it is not stated here preliminarily. It is believed that time and space will be economized by this course.

The sale which the complainant seeks to rescind is one by which Darby received $50,000 in cash, and was relieved of a liability for $150,000 more, not then due. It does not plainly appear what was the scheme of the bill; whether it was to rescind the contract *ab initio*, returning to Lucas his cash payment and relieving him of his assumption of $150,000, while taking from him the property, or whether the idea of the draughtsman was, that he should lose his cash payment and be held to pay moreover the $150,000 according to his assumption, yielding up the property to the assignee clear of encumbrances; and no light was shed upon this interesting inquiry by the discussion at the hearing. It was there strenuously urged that Lucas had, in some mysterious and undefined way, practiced a fraud upon the

bankrupt law, and on Darby's creditors; that he had acquired no title to the property, all color of such being completely dispelled by the supposed fraud, and that he was entitled to no consideration at the hands of a court of equity. The defendant is therefore obliged to consider as carefully and candidly as may be, the facts presented by the record and the law applicable to them. In doing this he does not so much assail the case of plaintiff, as presented by his advocates in the Circuit Court, as consider every objection which occurs to his own mind. He has little expectation of encountering here the particular arguments relied on below: and he is too well aware of the difficulty of fixing the form of Proteus, to enter upon a task so unpromising and so unproductive.

Forasmuch as the transaction referred to in the bill is impeached only as being a violation of the policy of the bankrupt law, nothing is necessary but to vindicate it from this charge. The 35th section of the Act "to establish a uniform system of bankruptcy throughout the United States," is that which is relied on by the complainant as entitling him to the relief he seeks; and it is necessary to consider it in some detail.

The *caption* of the section is, "*Preferences and Fraudulent Conveyances declared Void;*" And the section, after speaking of *preferences*, which are clearly out of the question here, goes on to say as follows:

"And if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before, &c., &c., makes any payment, sale, assignment, transfer, conveyance, or other disposition of his property, to any person, who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property coming to his assignee in bankruptcy, or to prevent the same from being distributed under this Act, or to defeat the object of, or in any way impair, hinder, or delay the operation and effect of, or evade any provision of this Act, the sale, assignment, transfer, or conveyance shall be void . . . And if such sale, assignment, transfer or conveyance is not

made in the usual and ordinary course of business of the debtor, the fact shall be *prima facie* evidence of fraud."

It is conceived that the intention of the law-maker is very clearly expressed here. The purpose is to prohibit two things. One of these is a *preference of* ANY *kind to any* creditor. All inquiry into the goodness of motive, all question of the sacredness of the consideration, is rigorously set aside, and declared to have nothing to do with the matter. *All preferences*, without reserve or qualification, to any creditor, are *absolutely* forbidden; And if they prove to have been given within four months of the filing of the petition by or against a bankrupt, they cannot stand. The original consideration of the debt is of no earthly consequence. The bankrupt may be indebted to two persons only. His obligation to one of them may be of the very highest moral sanctity, as well as legal validity. The other liability may exist in virtue of the application of rigid technical rules to the hardest and most unrighteous case conceivable, and still the rule of the Bankrupt Act is unbending and plain. It declares these debts of equal standing in the eye of the law, and because the law refuses to discriminate between them, it forbids the insolvent to do so.—As already observed, however, no question of a *preference* can arise on this record. We come now to the matter of sales and conveyances. The first thing standing clear and emphatic on the face of the prohibition is, that not *all* sales and conveyances are pronounced void (as is done in the case of *preferences*), but only FRAUDULENT sales and conveyances. There must be a fraudulent purpose on the part of the bankrupt to evade the provisions of the Bankrupt Act; and his vendee must be at least cognizant of this fraudulent design, or the transaction is not within the prohibition of the law. It is submitted that nothing can be plainer than this. On the part of the insolvent there must exist an intent to defeat or impair the operation of the Bankrupt law, and to withdraw his property from its control; and his vendee must have known, or have had reasonable cause to believe that such was the intent of the insolvent.

It is clear that unless such were *in fact* the purpose of the bankrupt or insolvent, it is idle to inquire what were the suspi-

cions, or imaginations, or delusions of his vendee. There must be a *concurrence* of two things, viz.: 1st. The fact of such purpose on the part of the insolvent. 2nd. The knowledge of such purpose, or reasonable cause to believe it, on the part of the vendee. The moment either of these conditions is negatived, there is an end of the case.

It would be eminently preposterous if any Bankrupt law in a commercial country, was framed so as to forbid *all* sales or conveyances by an embarrassed person. A more excellent contrivance for paralyzing business, and for making the smallest wound to one's fortune, certainly fatal, could not be devised. The ability, the resources, and the real worth of a man (and of a merchant or banker, as well as of any other), are seen, when, in the presence of danger and difficulty, he faces the enemy manfully, and surmounts obstacles which appal and prostrate the timid and the irresolute. In the crisis of extrication or suspension, the merchant who would pause to weigh the "prospective value" of a piece of unproductive property, by the prompt sale of which he might realize a sum of ready money sufficient to save his credit and relieve his embarrassment, stands convicted of having mistaken his calling as signally as a general who would hesitate to sacrifice his baggage, or even his artillery, in order to make a forced march on which depended the safety of his army. The captain who thus falters generally ends with losing *all*—baggage *and* artillery, as well as rank and file. The merchant who cannot make up his mind in time, has for the most part full leisure and reason to deplore the ruinous consequences of *his* vacillation. He sees them all, but sees them too late, when the fatal protest has once been made. It would be the most idiotic legislation that ever afflicted a nation, to make penal all such strenuous exertions as the presence of danger instinctively calls forth in a manlike nature. We are relieved, however, from all speculations of this nature. There is no such legislation on the statute book. Yet it is essential to the success of the argument made in the court below for the complainant, that such legislation either express or constructive should be declared to exist.

It was earnestly contended by the complainant in the Circuit Court, that any man who, within four months, had sold his property even for a fair price to any one, who for any reason suspected his solvency, violated the provisions of the Bankrupt law. When, for the purpose of testing this position, the court asked whether if the vendor were a retail dealer, who for four months had been selling his goods at a small advance above cost, or at cost, or below cost, for cash, any purchaser who might have suspected his condition, and who neglected to inspect his books before buying a pound of sugar, was supposed to be within the prohibitions of the Thirty-fifth section, an affirmative answer was intrepidly given. The logical consistency of the reply is worthy of all praise, but the defendant ventured to regard it as a *reductio ad absurdum*, which demonstrated the hopelessness of the enterprise in which the complainant was engaged. The great bulk of even prosperous retail dealers would soon be rendered insolvent, if they were forbidden to convert their stock into money. To impose such a restriction upon one overtaken by a transient embarrassment would indeed be ruinous. It would be like sending a vessel to sea with the condition annexed, that it should founder, without an effort, in the first gale that it might encounter. It is needless to add that of all persons engaged in business, none is more beholden to ready money and the advantages which it yields, than the banker ; and that it is beyond the power of any one not intimately familiar with the minutest details of the business of any particular banker, to pronounce upon the judiciousness or injudiciousness of any means adopted by him to obtain command of money. Anxiety on the part of a farmer immediately to convert property into cash, might perhaps give room for suspecting that all was not well with him ; for the urgent demand for the employment of money in sudden emergencies, can hardly occur in agricultural life. It is quite otherwise in the rapid operations and shifting currents of the stock exchange.

Let us proceed to inquire whether Lucas had any notice of Darby's insolvency, or reasonable cause to believe that Darby was acting in contemplation of insolvency.

Darby himself (being examined by complainant) testifies that he was so far from supposing himself about to come under the operation of the bankrupt law when he made the sale to Lucas, that two months afterwards, when he was forced to suspend, it was no part of his expectation to take the benefit of the bankrupt act. He then believed that by proper management of his resources he could pay all his debts. He was not without experience of similar trials. In 1857 he had been obliged to suspend, owing $360,000. He had struggled through, and had paid the whole of this large sum, with ten per cent. interest, to his creditors. No man lost a dollar by him then. Lucas tells us that when he heard that Darby owed money it did not affect his belief in his ability to pay, for he remembered the indomitable energy and fertile resources of the man on former occasions. In 1869, when forced to suspend, Darby was of opinion that he could repeat the performances of 1857, if left free to work. We have no means of testing the soundness of his opinion, for he was not permitted to act upon it; but what is important to be remarked here, is that we are concerned, not with the rightness but the uprightness or sincerity of the man. If he really did not, as late as June 1869, contemplate insolvency, or believe himself to be insolvent, it is manifestly preposterous to indulge any hypothesis founded on his intent to defeat the operations of the bankrupt act in April, 1869; and surely we are not making an unreasonable demand when we claim that those who have called the witness to the stand are not at liberty to impeach his sincerity.

But if Darby's sincerity were open to question by the plaintiff, it is believed that he could very triumphantly show to any candid inquirer that he had good reason for the faith he professed. He believed that by discreet management he could save a large margin on his Main Street property; and he had in Franklin County a tract of mineral lands of a value which no one has defined, but which was very great. Under very incompetent management these lands had yielded a very large profit, which, however, had been embezzled by knavish agents. In one year this yield reached the sum of $33,000. There was no very striking extravagance in considering property capable of such

a rent to be worth $250,000. It will presently be seen that the property in dispute here, which the plaintiff alleges to be worth $300,000, yields barely the half of this sum in gross; and though we shall also see that the plaintiff sturdily repudiates the income-producing capacity of property as a *test* of its value, or indeed as any criterion of it, it is believed that the common-sense of mankind, as well as the laws of political economy, are so far opposed to him as to permit us to assume, without serious dispute, that a mine which yields such a sum as $33,000 in one year's working, is not over-estimated at a quarter of a million of money. The yield, it will be seen, is rather more than 13 per cent. of the capital.

Now all of Darby's liabilities only foot up $220,000, or about that sum, according to the plaintiff's own showing. Was he then in contemplation of insolvency in April, 1869? As has been seen, he swears to the contrary. Was he, nevertheless, so demonstrably insolvent as to have had no rational ground for contemplating any other condition of things? It is submitted that he was not. Although this estimate of his mineral land should prove to be correct: although that sum be ultimately realized, and every debt of Darby be paid in full, he may have been, according to the proper definition of the term, a bankrupt; but his insolvency would, by the hypothesis, stand disproved, and he had excellent reason for believing that he was, indeed, not insolvent.

It thus appears that Darby himself had reasonable cause not to consider himself unable to pay all his liabilities; not insolvent in short, for that is the meaning of the word: but how much less was the reason for Lucas to suspect or imagine him to be insolvent. He might have been insolvent, and yet Lucas might have had no reason to suspect it. But if he was *not* insolvent as matter of fact, or if any one acquainted with *all* his affairs might rationally have believed him to be solvent, of course no case can be made against any purchaser from him.

Objection may be made to an illustration of a rhetorical appearance, and few are more averse to such than myself, but in the course of my reading I lately met with one which appears to me so apposite, that I will re-produce it here, at the risk of

sinning against good taste. It is known that in the year 1869, General Trochu wrote a pamphlet, exposing the faults which he imputed to the French army and its administration. This was while the prestige of French invincibility was unbroken. It was more than a year before Sedan. Any one accepting Trochu's views would have been considered at that day, as he was considered, a prejudiced and malignant enemy of the Empire, having no reason for his strictures except his wish to believe evil of the dynasty. No one could be fairly considered to have been by this pamphlet "put upon inquiry" as to the conclusions announced by Trochu, contradicting as they did the fair outside which was presented to the world. At lowest, no one could be considered to be thus "put upon inquiry" except such as had access to the archives, and the records of the internal administration of the war department. Nevertheless the fact was as stated by Trochu; and inasmuch as he had been familiar with the details of military administration, nothing but the prejudice which blinds the eye, or the falsehood which perverts the tongue, or it may be perhaps suggested, an inherent incapacity to form a competent judgment on the subject, could justly in the mind of the public, have discredited his testimony at the time. It will not do to say, by the light of the astounding and well nigh incredible events of 1870, that the world had "reasonable cause," before the armies of France moved from their depots, to believe in the utter rottenness of the French military system. No man can be expected to be wiser than the whole world. At any rate, no *individual* can be blamed for not being wiser than the general mass of mankind. No man is to be sneered at for being carried away by the general belief. The general opinion of mankind may be wrong; it often is so; but if nine men in ten, much more if ninety-nine men in the hundred, upon a given state of facts, reach by an independent process the same conclusion, it requires an unusual degree of arrogance in the dissentient, before the event, to say that the ninety and nine had no reason for *their* conclusion, and ought, as sensible men, to adopt his own. The *event* may prove this, of course. But constituted as human nature is, it is a contradiction in terms to say that the opinion or conclusion which the

general, almost the universal mass of men will reach upon the presentment to them of a given state of facts, is *unreasonable:* that is, opposed to human reason, or contrary to what we have a right to expect of the human understanding dealing with evidence.

If this reasoning be sound, the argument *a fortiori* can be claimed for Lucas in the case at bar. He knew that Darby had suspended in 1857, and had taken upon himself the payment of the enormous debts of Darby & Barksdale. He knew that Darby successfully paid all these debts, and ten per cent. interest; and we know, and have no reason to suppose, that Lucas was not as well informed at one time, though he may have forgotten the details, that these debts amounted to $360,000. He further knew, that the struggle of 1857 was not the first, but the second crisis that Darby had met victoriously—the first being in 1841-2; and the fact that Darby had come out of both these sharp trials apparently unscathed, seemed to invest him with the attribute of invincibility. He knew that in 1864, Darby had resumed the banking business, and coincidently with this resumption, he knew, or might have known, that he raised large sums of money on his property in St. Louis, especially on this, at the corner of Fifth and Olive. It was not of course encumbered to its full value, for none, except by mistake, ever succeeds in raising the full value of a piece of property by mortgage. But let it be admitted that Mr. Lucas knew, or had reason to believe, that Darby's property at the corner of Fifth and Olive streets, was encumbered as deeply as he could succeed in encumbering it; and that Darby, nevertheless, wanted more money for his banking business; and heard at the same time that Darby's paper was selling on the streets, in the hands of street brokers. At this juncture comes to him Mr. Hodgman, Darby's agent, with a proposal not to borrow any additional sum on the property (which by the hypothesis is impossible), but to sell the equity of redemption outright;—what is the natural, reasonable inference for Mr. Lucas to draw? Plainly this: that Darby prefers to sell his property at a fair price, rather than to pay for money the rates he is surely compelled to pay, when he employs street brokers as his agents. All this time, be it remembered, none of

Darby's paper has been dishonored. There was some delay, of which *we now* know the real cause, in paying some paltry check, but not only did Lucas and the community know nothing of this, but the very holder of the check had no suspicion. Some difficulty of a technical nature was made, some objection taken which caused a slight delay, and then the check was paid. The suspicions of no depositor (except Mr. Polk, who was a time depositor, and of whose relations with Darby Lucas knew no more than Polk knew of Lucas') appear to have been aroused. Certainly no noise was made by any one ; and the fact that when Darby did go on the street he was backed by men of such solidity as Brotherton, and of such caution as Knox, was well calculated to allay any alarm that might otherwise have been excited by this mode of raising money. In this very connection the facts detailed by Mr. Blood are most striking.

Some of Darby's notes with Knox's endorsement had been purchased on the street by the Boatmen's Saving Institution, of which Mr. Blood was President. Meeting Mr. Knox, Mr. Blood knowing his former partnership and present intimacy with Darby, determined to clear up anything that might be suspicious in the fact that Darby's notes were on the street at all. He mentioned the fact, and asked Mr. Knox's opinion of Darby's condition. Mr. Knox replied, that Darby was perfectly good ; " as good as anybody." It was Mr. Blood's first impression that Mr. Knox added to this assurance the corroborative remark, " You would not else see *my* name on his paper." He seems not to be quite positive that Mr. Knox did say this, however ; and for my part, I care not a pin whether he did or no. Either Knox said it, or it was the practical comment which Blood made upon what he incontestably *did* say. I incline to think it most probable, that it was actually said by Mr. Knox ; but it is just as strong an inference from what he said, as if he had himself drawn it, and it is quite possible that it was only an inference drawn by Blood. He reasoned very cogently from undeniable premises Mr. Knox was a lawyer, a prudent man, a former partner of Darby, and still intimate with him. He had endorsed Darby's paper largely, and that paper was offered for sale on the street.

His attention is called to the circumstance by the president of a leading bank, and he is asked if this circumstance means, in Darby's case, what it might signify in the case of others. To this inquiry, Knox makes a reply which was surely well calculated to reassure all doubters. He declares his conviction of Darby's perfect solvency; and he does this knowing Mr. Blood's official position, and apparently with the purpose of establishing Darby's credit at his bank. It may be said, indeed, that Mr. Knox, startled at the news he heard, perceived how necessary it was for his own safety that Darby's credit should be preserved, and answered accordingly. But this is an explanation which Mr. Knox will hardly make, and which I certainly believe to be very unjust that any one should make for him. It would be an imputation to him of something very different from candor; and in my judgment there is no room to doubt Mr. Knox's perfect sincerity. If he had from that moment ceased to back Mr. Darby, the matter might be equivocal, but he *continued* to endorse for him. That Blood repeated Mr. Knox's assurance to the Board of Directors (of whom Mr. Lucas was one), can hardly be doubted; and Mr. Knox's continuing to endorse for Darby, was fully equivalent to a repetition of the assurance. If the directors of the bank were subject to the usual influences that form men's opinions, they must not only have believed that Mr. Knox was sincere in the opinion he expressed of Darby's solvency, but that this opinion was more reliable than that of any man living, except Darby himself. The inquiry here being of Mr. Lucas' means of forming an opinion of Darby's solvency, we see that he had excellent reasons for resolving the question in the affirmative. He was well acquainted with the strenuous energy of the man; he knew that he held much real estate; he knew that he had emerged successfully from embarrassments, "enough to press a royal merchant down,"—which had followed his connection with Barksdale, when he paid debts to the amount of $360,000, and ten per cent. interest; and now he was doing business by himself, but backed by two of the most cautious men in St. Louis, men who were his intimate friends, one of whom was very wealthy, and the other had been his partner. From

that one of these who was most likely to know, he had an asseveration which was coupled with conduct which proved its sincerity; and the asseveration was that Darby was perfectly solvent. All this time, no paper of Darby's was protested. He was conducting large operations, showing abundance of what is called *nerve*, and enjoying in plenty what is known as credit. Under such circumstances as these, the Court is asked to believe that Lucas must have known—that he did know, or was culpably negligent for not knowing that all this fair outside covered but inward decay! What means of information did any member of that Directory (Lucas being one of them) lack as to the condition of Darby, except a sight of his books? It is unnecessary to say that these were inaccessible to Lucas. He would have been less than civil if *he* had put to Darby the question which Blood put to Knox; and if there was really any cause for alarm, the likelihood of receiving a candid answer was far less in such a case. Those who know Mr. Lucas will not think it a natural thing for him to tamper with Darby's clerks; but suppose he or any one else *had* stooped to meanness of this kind; we are told by Mr. Valle what answer *he* would have given, to such impertinence, and indeed no man in his senses would expect any other. Then what means of information did Lucas neglect? I say he neglected *none*.—The case was argued in the Circuit Court as if the encumbrance of a piece of property was the destruction of its value; as if, when a man raises money on mortgage, the community were at liberty to conclude that he retained neither the money nor the property. Nothing can be more unreasonable. The *sale* of a piece of property outright, indeed implies that the former owner holds it no longer, but it also implies that he holds the price which was its equivalent in the transaction. If a man *sells* a piece of property for a price considered large, the natural effect should be to *increase* his credit. If he sells it for a fair price, the natural effect should be certainly not to impair his credit; and if the party be engaged in business requiring ready money, consummate financial ability may be shown, by even selling for an inadequate price *for cash*, just as, to adopt an illustration already employed, a general often accomplishes the most brilliant

results, by the rapid movements he is able to make through the sacrifice of his baggage, and even his heavy artillery. In the case of a sale, there is no destruction, but only a change in *the form* of property. In this country there is none of that sentimental affection for landed property, which causes men to cling to it with such tenacity in other places. If a man holding large landed property, should embark in such a business as banking, every one who gave himself the trouble to reflect upon the matter, would see that it was the most natural thing in the world that he should either sell or mortgage his real estate. Some men would, under such circumstances, prefer to sell outright, but the history of most western, and not a few eastern cities, admonishes all such that often the appreciation of the value of real estate well justifies a mortgage instead. Nearly all persons in a growing city have an almost insane belief in what they call the "prospective value" of property. *I* call it almost insane. The plaintiff is hardly at liberty to do so, for his witnesses to value—those who alone give the least countenance to the idea that Mr. Lucas got the property in question at a bargain—expand themselves upon this swelling theme. Without "prospective value" their theories would break down altogether, even granting their premises. In a few moments it will be shown, at the proper place, how mistaken they were both as to fact and deduction. But if a man never ventured upon an act, the prudence of which can be justified in the eye of the coldest prudence, more fortunes, perhaps, might be saved, but many an opportunity of making a fortune would be lost. Proceeding, however, to the matter of raising money on mortgages, what would be the inference from the fact, that money *was* so raised? Simply, that the mortgagor owed about as half as much as his real estate was worth, and had the money on hand, available for the exigencies of business. He would still be regarded, as he would still continue to be in fact, the owner of a large marginal interest, not less in ordinary cases than 50 per cent. (or, to make the statement very guarded, let us say, from 25 to 40 per cent.), which would constitute a reserve, over and above the ready money embarked in business. I submit that this is a fair and temperate statement of the matter

Let us now suppose—and I take, on purpose, the case most unfavorable to Mr. Lucas—that he knew the amount for which Darby's paper was in the hands of street brokers. *We* know from the testimony that it was about $40,000; rather less than more. At this juncture Mr. Hodgman approaches him with an offer for the sale of the equity of redemption of the property in question. The sum for which this equity was to be sold, besides being in cash, was more than sufficient to retire all the paper of Darby which was on the street. Was it an unreasonable conclusion that Darby was making the sale for this very purpose? We think not. It would have been eminently judicious to retire that paper which was on the street. It would raise Darby's credit, instead of lowering it. It was precisely what a prudent man would have done. Mr. Lucas had the right to presume that it was precisely what Mr. Darby would do. It would fortify his position and render him impregnable. This, we submit, is what would be the estimate of such conduct by every prudent and impartial man. The Court is asked by the complainant, however, to believe that Mr. Lucas should have seen it to be the sure harbinger of ruin for Darby.

I have already adverted to the fact that unless, in making this sale, Darby was scheming to defraud his creditors by withdrawing his property from the operation of the bankrupt act, Mr. Lucas cannot possibly be charged with aiding him in such a scheme. There can be no accessory where there is no principal. In the court below an attempt was made to evade the force of this objection by saying that it was not necessary, in order that Darby should be deemed guilty of scheming to defraud his creditors by withdrawing his property from the operation of the bankrupt law, to be certain that he had this particular statute in mind at all; that he may be supposed entirely ignorant of its provisions; and yet, if he does something which that act forbids, he shall be deemed in law to have intended to violate the law, or to have schemed to violate it.

There is surely no disposition on my part now, as there never was at any former time, to controvert this last proposition, though I saw before, as I see now, the use that the ingenious counsel for

the complainant would attempt to make of the concession. The question remains wholly unanswered: "What does the bankrupt act forbid?" It forbids the doing of any act having for its object, or motive, or (and this is the very utmost that can be claimed) for its *plain and necessary consequence* the withdrawal of the property of the vender from the operation of the act; or, (which is a better form of expression) which has for its object, motive, or necessary consequence, the defeat of the provisions of the bankrupt law.

But how can this defeat be brought about? Only, I submit, by preventing the equal distribution of the debtor's property among his creditors. Nothing can be plainer than that when a debtor rationally and sincerely proposes to pay every debt in full, there can be no question of an intent to defeat a fair distribution of his property *pro rata*, and that Darby had such an intention he swears when examined by the plaintiff. But how is any debt to be paid by means of property? Only, it is submitted, by converting the property into money, and applying the money to liquidate the debt. To attempt to barter property itself in satisfaction, is an operation so cumbrous and rude, to say nothing of its being unacceptable to the creditor, as to constitute it no exception to the universality of the observation. The bankrupt law does not forbid sales. It does indeed forbid *fraudulent* sales, but not sales not fraudulent. If Mr. Darby did not suppose himself insolvent (and he not only swears that he did not so consider himself up to the date of his suspension, but gives some excellent reasons for his opinion, of which I have already spoken), then there was no possibility of his *intention* to defeat the bankrupt act by making this or any other sale. Did the plain and necessary consequence of the sale have such a tendency to effect this result that the law will listen to no denial of the intention? This, to give the complainant every possible advantage, is the form of the question which I propose to discuss. The plaintiff answers this question by a positive affirmative. The defendant submits that when he has done this he has absolutely nothing to support his assertion. No such consequence is predicable of the sale in question. When property is sold, it has been said that its form,

as part of the wealth of the vendor, has been changed. He ceases to be the proprietor of the thing sold, but in recompense becomes the proprietor of its price; and sales are generally conducted on the idea that the one is, all things considered, the equivalent of the other. It is the same when one piece of property, instead of being sold for money, is exchanged for another piece of property. In either case it is certainly true, in a narrow and misleading sense, that the particular thing sold or exchanged is withdrawn from the creditors (if any) of the vendor or exchanger; for, in each case, the substitution of a full equivalent satisfies every demand of the most exact justice, both in letter and spirit. If, however, a man in insolvent circumstances, or being in fact perfectly solvent, though owing some debts, makes a sale of valuable property for cash, or for negotiable securities, and then, converting the securities into cash, proceeds to conceal (it may almost be called embezzle) the money, his remaining assets being not enough to pay his debts, and it being the vendor's design from the first to perpetrate this fraud on his creditors, but his vendee having no suspicion or hint of it, the sale itself must stand, and, when the facts are known, is not open to challenge. The bankrupt act does not invalidate such a sale, either in terms or by implication. Indeed, that act (§ 35) is sedulous to declare that such a sale must stand unless not only the vendor has entertained the purpose of violating the act, but the vendee has been privy and assisting to that purpose. If Darby had kept the money he received from Lucas in cash ($50,000) until his suspension, or if he had suspended the moment the sale was consummated, would the sale have defeated or had a tendency to defeat the operation of the act? The money would be there, to be divided among his creditors according to its provisions. The reduction of property to money on fair terms, or indeed on any terms not ruinous, is a decided benefit to an embarrassed man. Every one is familiar with this truth. The only inquiry that remains open is whether the price here was so grossly inadequate as to furnish a suspicion and a badge of fraud, and put the purchaser in the position of being called on to explain it.

When we come to the question of value, the testimony is so

voluminous and conflicting, that I am compelled reluctantly to extend my remarks over no small space.

First of all, it is plain that but for the fact that Mr. Lucas, in 1868, signed the certificate of value required when the loan for $150,000 was negotiated, much, if not all, of the smartness of the edge of the attack on this subject would have been wanting. The plaintiff has gone on as if it was not only incontrovertible that Mr. Lucas is estopped to dispute the correctness of the valuation then made, but is bound to make it good, on call, by giving the sum named for the property; at least, that he is precluded from purchasing at a less sum. This notion pervades all the examinations of all the witnesses for the plaintiff; and but for the tiresomeness of the length to which the idea is worked out, it might have some pretensions to be considered comic; not the least of its claims, in this last sense, being the sober good faith with which the curious notion is hugged by its authors.

Yet, after all, the substance of the matter is plainly this, and no more, viz: Darby wishing to make a loan, desired Lucas' statement as to the goodness of the security; and Lucas having heard in some loose way, that Darby had refused $300,000 for the property, some years before, (we see, however, that he was misinformed, and that no such offer ever was made), acquiesced (carelessly, perhaps) in the conclusion stated in the paper he was requested to sign, viz., that the property was worth that sum. But Lucas knew that Darby wished to borrow $150,000, and *the substance* of his certificate was, in his eye, that the property was excellent security for that sum. While I do not approve the practice of signing certificates, except when the certifier knows well what he is saying, let us consider what would have been Lucas' obligations or liabilities in respect of that certificate, if it had appeared that Lucas had signed it, not *carelessly* but *fraudulently*, with intent to procure for Darby thereby a credit to which he knew him not to be entitled. Under such circumstances Lucas would at most have been compellable to make good to the lender whatever loss he had incurred by treating the property as good security for the loan. But suppose that the lender had purchased the property at a foreclosure of the mortgage:

would he have had the right to hold Lucas for damages if the property proved not to be worth $300,000? Assuredly not. And yet the plaintiff has been throughout practically asserting the affirmative of this proposition. If the lender, choosing to overbid some one at the sale, paid $205,000 for the property, a sum more than enough to pay his own debt and interest, then according to the logic of the plaintiff's counsel, he would, in the case supposed, have his action against Lucas for $95,000, as the measure of his damages for his disappointment at not obtaining as he expected, for $205,000, property worth the larger sum of $300,000.

The party making the loan upon the certificate of Lucas and others, was not injured by it; for the substance of that certificate is true. That the certificate was made honestly, is not to be doubted for a moment; but honestly or not is immaterial so far as the lender of the money is concerned, for he has all that he wanted, viz.: ample security for his money. It may be that I entertain unfashionable opinions of the duty of those who are called on to sign memorials for the appointment to office of this or that applicant, or the pardon of this or that convict, or any other certificate to character or value; but it is undeniable that so great is the illwill a man incurs by refusing to sign such papers, so marked is the line, which, by such refusal, he draws between himself aud the great bulk of the community, that most men sign such papers too loosely, and with very uncritical knowledge of the truth of the facts stated. They satisfy themselves with the representations of interested parties, as in the case at bar the statement contained in the paper written and presented by Darby was adopted by Lucas. He had more reason than often happens for this adoption; for he had heard (it turns out that he was misinformed, however), that Darby had refused the sum named for the property; and now, seeing that Darby asserted the property to be worth a sum which he had heard *aliunde*, that Darby had formerly refused, he acquiesced in the statement; the rather because independent of all such knowledge or surmise, he felt quite convinced that the *substance* of the certificate was true, and that in any event the proposed loan was amply secure.

In fact, Mr. Britton, who also signed the paper, tells us that *he* makes a practice of regarding values with extreme liberality, when he knows that the inquiry is made for the purpose of a loan, and the lender demands a margin equal to the text. It is not in the least surprising that this should be so. It is the natural reaction against a harsh rule, which thus defeats itself. The certifier knows what the lender wants: it is *absolute security*. This he considers reasonable enough. He knows also that the lender defines absolute security to mean double the value of the loan, even though the property is in the heart of a city, improved and productive. This the certifier considers *un*reasonable. Instead of refusing to certify that the property is worth two for one, he first, in his own mind, determines it to be ample security for the loan: and then adopts for the occasion the definition of ample security on which the lender has insisted. I have nothing to say in favor of the practice. The certifier makes a compromise, between what HE considers the exigencies of a safe rule of business, and the harsh terms exacted by the superfluous stringency of the rule adopted by the lender. He sees that unless he does this, the lender will miss a loan on excellent security, and the borrower will fail to get the money he needs: and thus both parties will be damaged, unless he puts an interpretation of his own on the terms employed. No doubt, this is all wrong. The certifier should content himself with saying that the property is excellent, ample and undoubted security for the loan, if he so thinks: but he certainly is not justified in saying that it is worth twice the money proposed to be lent on it, if he does not so think.

In the case of Mr. Lucas there seems to have been none of this specious sophistry. When he signed the paper, he supposed he was stating a literal fact. He tells us that he was unaware at the time of the faulty construction of the building, and of the small figure which the rents reached, and that the extent of his mistakes in these particulars was matter of surprise to him. He tells us that the gross sum received for rent of the building annually, did not vary by $500, from $17,000. Upon this it was at once asserted by plaintiff's counsel, that the court was bound to take the sum to be at least $17,499.99; but I submit that this is not

fair, for very plain and obvious reasons. No presumption exists that Mr. Lucas is testifying under any bias to discolor the facts. His deposition was taken in May, 1870: the cause was heard in February, 1871, and depositions appear to have been taken up to the latter part of January, 1871. In all that time no attempt was made to contradict Mr. Lucas' statement in this particular. An attempt was indeed made to extract from all, or nearly all, of the plaintiff's witnesses, some statement of the yearly value of the property. But this attempt, which yielded no results, was made on cross examination, and by defendant. Not even Darby could answer the inquiry. The bulk of the witnesses who were most positive of the great value of the *fee* of the property, could tell us *nothing* of the yearly value, and seemed even to consider the inquiry an impertinence. Darby's agent, who had collected the rents, could not answer it. It seems that Darby kept no books of this matter, and his memory did not enable him to speak. But Lucas' agent did keep books, and his statement could easily have been contradicted if it had been plaintiff's interest to contradict him: that is, if his statement of the rents of the property were not, to the full, as favorable to the plaintiff as the facts would warrant. We see that the plaintiffs spared no pains, left unturned no stone, in the search after testimony; that in their eagerness to get at the facts they desiderated, they gathered up no inconsiderable amount of (what certainly looks like reckless and malignant) charges of fraud, which, however, being accompanied by specification, and depending on the ascertainment of facts, the defendant has had no difficulty in showing to be absolutely false: (*i.e.* the piquant fiction stated in the bill respecting the April interest on the loan for $150,000, and the distrust then manifested by Lucas as to the solvency of Darby); and it is no hasty conclusion, that if the statement of Lucas, respecting the yield of this property, could have been denied or disproved it would have been.

We are, therefore, at liberty to take $17,000 as the *maximum* gross rental of the property. The argument I propose to make on this basis, will be but little weakened by conceding a gross rental of $17,499.99. But, I think, we have a right to the fact

which is proved, instead of resorting to an hypothesis against which every probability can be invoked, and which is supported by no testimony at all. Assuming, then, the gross rental to be $17,000, let us see whether the property is dear or cheap at $200,000. Lucas pays, first of all, $12,000 yearly interest on $150,000. His $50,000, paid in cash, could, we are informed by plaintiff's witnesses, be readily invested at from 8 to 9 per cent. per annum. Let us call it 8 per cent. This makes $4000 more. Then come the taxes. These were nearly $2,900 in 1869. No tax-payer in St. Louis will think that I am properly careful of his wounded feelings, if I suggest that these have undergone a diminution in 1870 or 1871. Moreover, Lucas had to pay insurance to the amount of $100,000. This was one of the covenants of Darby's deed of trust, assumed by Lucas. If he gets along with as little as one per cent. on the sum insured, he is lucky. Let us, however, call it ¾ of one per cent., or $750 per annum. We have already the sum of $19,650 to be certainly paid; or which must be taken as a charge on the property; without counting agency, care of the building or repairs. If these items do not mount up to $350, and make the debit side fully $20,000 per annum, this building is economically managed. But here is a yearly loss to the purchaser at $200,000, of $2,650, certainly, and $3,000 probably, per annum, reckoning money at 8 per cent; and this clearly brings the property within the category of "*damnosa hereditas.*" In fact, suppose the property, in April, 1869, to have been burdened with the payment in two and a half or three years of $200,000, and 8 per cent. interest: would any man, solvent and in his senses, have been willing to bind himself to take the property and pay off the encumbrances? Of course, there are many needy adventurers, who, having everything to gain and nothing to lose, would have been willing to take the chances of the market which such a purchase would have offered. But would any man of means have done it? *

---

* NOTE.—In this connection it is not improper or irrelevant to note the price which the state, city and county assessors put on this property for the purpose of assessment and taxation. It is matter of familiar knowledge to all

It was said at the argument below, in reply to this mode of testing the value of property, that in fact it furnishes no test at all; and one of the counsel stated (*arguendo*) in illustration of the view he contended for, that in 1850 he purchased property on Third Street, in St Louis, which had yielded but little rent, not enough to keep down taxes indeed, but had doubled in value since. Now if this be so, and this be *all*, I take the liberty of thinking that the speculatiou was a very bad one. At 10% compounded half-yearly (which *ought* to be the rule where there are no rents, or none beyond taxes), money will double itself in a little more than seven years and a quarter. In 1857, then, this property ought to have been worth twice its purchase, for the price paid for it would have doubled in that year. In 1864, or say in 1865, the money doubling again, would be *four* fold what it was in 1850; and in 1872–3 the startling sum of eight times the original purchase-money should be realized (supposing all along that there are no rents), in order to make the real estate operation a *fair one*. But did the learned counsel know of no purchases of real estate made in 1850 in St. Louis, which have not only yielded no rent, but the fee value of which,

---

owners of real estate within the old limits of the city, that the total of city, state and county school-taxes is just $2.80 on every hundred dollars of assessed value, and that the Board of Assessors profess to assess all property at three-fifths of its fair market value. That they do, in practice, estimate improved property in the central parts of the city (say from the river to Twelfth street, and from Elm to Biddle street) at this figure, *at least*, most tax-payers will admit. I know no owner of central improved property within these limits, who wishes to sell at all, who will not gladly sell any or all his property at the market rate thus ascertained, *i. e.*, for five-thirds of the price or value put on it by the assessors. Now, the price placed on this property, at corner Fifth and Olive streets, in the tax-bill of 1869, was between $100,000 and $105,000; add to the larger of these sums the ratable increment, and we have $175,000 as the market value of the property in the opinion of the assessors. These gentlemen always avail themselves of actual sales to *raise*, not to *lower* their rates. The assessment following 1869, was then three-fifths of $200,000, or $120,000, and the tax on this sum was $3,360, making a still greater subtrahend from the gross rental. (This note is taken from the argument made in the Circuit Court, which being composed of persons feelingly familiar with the mode and measure of taxation in St. Louis, was able to take judicial notice of the *data* on which the argument proceeds.)

instead of increasing at this or that rate has positively *declined?* If *he* does not, others do. In fact, nothing is more illusory than this reliance on what property may possibly be worth by and by. Those who make any estimates founded on it are very apt to make acquaintance with the "finishers of the law." (I mean *finishers* only as far as civil process is concerned, of course.) When once we depart from the basis of what property actually is worth, and indulge ourselves in prophecies or visions of what it *may* be possibly worth hereafter, we lose ourselves in the dream-land of "prospective values"—and this is only another mode of saying that we betake ourselves to gambling in real estate.

When we are called on to determine the value of real estate in a city, we naturally inquire whether it be improved or unimproved —and if *improved*, that is, covered with a building, whether the improvement be suitable to the use of which the lot is capable. A lot in a part of the city devoted and adapted to residences only, might be covered by a most admirable warehouse. A lot in the business part of the city might have on it an excellent dwelling with all the modern improvements. Yet in each case it might be the best thing to do with either to pull the building down to its foundation. From its utter unsuitableness to the situation, so far from adding anything to the value of the lot, it would be only so much rubbish, necessary to be removed to make way for something in harmony with the locality.

Between such a *something*, and a building, which by the hypothesis is wholly unsuited to the nature of the ground, there is of course every gradation. In the case at bar we do not know, *with precision*, how much the building falls short of being what it should be in order to make the value of the land itself operate to the best advantage, in conjunction with the building, in producing revenue. But, without exception, *all* the witnesses declare the building here to be badly constructed for the purpose of producing revenue; which being the only purpose for which any man in his senses would wish to own it, is equivalent to saying that it is badly constructed for any useful purpose; and the degree *to which the construction is faulty is measured very accurately by the extent of its failure to co-operate with the land in producing*

revenue by their joint action. This is no fancy or conjecture. It is as true as any mathematical or arithmetical truth can possibly be.

At the argument below, one of the ablest of the counsel for plaintiff, pressed by these considerations, attempted to weaken their force by what I considered an unlucky illustration. He said that if this lot were wholly vacant, and the owner erected on it a blacksmiths shop or carpenters shop, he would in all likelihood be compelled to rent it for a few hundred dollars per annum; but that it would not follow from this that the lot was worth no more than the principal sum which would yield that rent as annual interest. Clearly not. But it *would* follow that if this was the maximum rent which the lot would yield, unimproved, or thus improved, it was necessary to spend more money on it, in order to make it productive; that the existing improvement was a hindrance rather than a benefit; and that the use to which it was devoted was highly injudicious. If we are asked to accept the hypothesis that the lot without any buildings whatever, would be of *no* value, we reply that this hypothesis is glaringly opposed to experience; that such a lot *can* be advantageously leased for a term of years, both lessor and lessee profiting by the operation. But this lot *is* improved after a sort; and of one thing we are as certain as of any truth in science, viz: If, with its present buildings, it can only be rented for $17,000 per annum gross, either the building is judiciously constructed, in which case $17,000 is all that can be realized from the property while things remain as they are; *i. e.*, until actual values become prospective values; or else the building is *not* judiciously constructed, in which case, as long as it remains there, the property will remain comparatively unproductive, and any owner must take into account, when estimating its value, the inevitable loss attendant on an alteration, more or less thorough, and therefore more or less expensive, of the building, before he can reap the full profits of the property. The illustration employed by the plaintiff's counsel concedes that the diminished rent spoken of by Mr. Lucas proves the present building to approximate in practical results to no building at all; in other words, that the present

building is of small value compared with its cost. But this is all that we contend for. The lot is approximately in the condition of an unimproved lot; being, in fact, very injudiciously improved.

It is difficult to avoid commenting with some severity on the testimony of witnesses, who, however honest, speak as do the witnesses to value called by the plaintiff, without knowing, or even claiming to know, anything of the rent which the property, as now improved, yields. They assume to pronounce on its value, *because* property somewhere else *might* have been sold for the figure they named, had certain conditions been otherwise than they were; or because property in other quarters *had* been sold for these figures. This severity is the more deserved, because whenever the means exists of testing either the accuracy of their knowledge of facts, or the justice of their deductions from facts, we are able to demonstrate conspicuously, that both their memory and their judgment are totally unreliable. For example: Leffingwell was very confident that the property of Walker sold to the National Bank of the State of Missouri for $150,000, had only 60 feet on Fourth street, and 40 feet on Olive, the fact being that the front on Fourth was 90 feet, and that on Olive 58. On the basis of *his* figures, he declared the price obtained equal to $3000 on Fourth street, allowance being made for the shallowness of the lot on Olive. Of course the value of a lot fronting on Fourth street, and short of the usual depth, is not *proportionately* less than that of one having the usual depth, *i. e.*, a lot 60 feet deep, fronting on Fourth street, is worth much more than half as much as a lot of the same front and 120 feet deep. And this is fallacy *number one* in Mr. Leffingwell's reasoning. But we submit, that having shown that the bank's lot is 50 per cent. wider on Fourth street than he supposed, we have a right to say that even if it were only 40 feet on Olive, we should cut down his estimated value by 50 per cent.—which, on this basis alone, would reduce the value of the front on Fourth street to $2000 per foot. But the lot being at the same time *nearly* 50 per cent. deeper on Olive than Leffingwell supposed, a further reduction of a serious nature must be made from his figures. This brings

down the front on Fourth street to something materially lower than $2000 per foot. How much lower we do not need to consider, but it can hardly be less, we submit, than 25 per cent. This would make a serious diminution of his estimates, and completely explode his evidence. But let us observe one thing. This sale to the bank was made in 1869. In the summer of 1868, the same witness tells us, that the corner opposite belonging to Mrs. Patterson, could have been sold for $3000 per front foot, the proposed purchaser intending to tear down the old house, and build a new one. *We think he is mistaken.* But suppose him to be right here. It follows that in the course of one year, from 1868 to 1869, property on Fourth street, in St. Louis, had depreciated a little over thirty-three per cent.! Now, I invite challenge of what I have said in comment of Leffingwell's testimony. I have impugned his clearness of recollection, and his deductions from his recollections of facts, and I have exposed the blunder of his estimates; but I have judged him from his own mouth. It is not my fault if he figures to no advantage. His next feat is to transfer to Fifth street the prices, which, in his judgment, might at one time have been obtained for a corner lot on Fourth, and which he thinks were actually paid for a lot on Fourth street. We have seen that he was very wide of the mark as to what had actually occurred, although he testified with a positiveness and a particularity well calculated to impose upon a confiding nature.

But let it be granted *argumenti gratia*, that in the other case on Fourth street (of which, there being no documentary evidence and all that is pretended being, that some one would have been willing to give $3000 per foot for it in 1868, if Mrs. Patterson had been willing to sell, but that nothing came of it, it is impossible for us to *pin* him as we have succeeded in doing in the first case), Mr. Leffingwell is quite accurate. He says that Jameson, Cotting & Co., would have given $3000 per front foot for the corner of Olive and Fourth; and he thinks Olive and Fifth is as good as Olive and Fourth, that is, that Fifth street was, in 1869, as valuable as Fourth street. Now, every other witness, both for plaintiff and defendant, tells a different story. Marcus Wolf,

who gives a very flattering estimate of the value of this very lot, admits, on cross-examination, that there is, as yet, an interval between the values of the property on Fourth and Fifth streets. He says (p. 80 of the printed, p. 151 of the written record) that "Fifth and Olive is rapidly approaching the value of Fourth and Olive." *Q.* "Exactly; it is approaching but has not reached it yet?" *A.* "I think not. I think Fourth street has very nearly culminated, and the value of Fifth is advancing." Here we meet again our old friends, "prospective values,"—we see that there are men who venture to predict for Fifth street at some future time, prices equal to those now obtainable on Fourth. This witness had said also that the value of the property in question, was increased by the construction of buildings in the neighborhood. On cross-examination, he admitted that the making of such improvements "injured the *immediate* value." But he added, with the inveterate delusion of a man whose daily bread depends in *bulling* the real estate market, "but *prospectively*, it enhances the value," (p. 81 of printed record, p. 153 of written.) We are certain to hear of this *prospect*. It would be death to the real estate business to shut it out, and the chorus of real estate agents is as unanimous in chanting it now, as was that of another set of interested panegyrists of old who shouted, "Great is Diana of the Ephesians."

All the witnesses to value called by either side (except such as demonstrated that they could not, in 1870, discriminate between the events of 1868 and 1869) testified that property was not as saleable in 1869 as it was in 1868; and they all give the same reason, viz: the approach in value of treasury notes to gold, and the expectation of approaching specie payments. Mr. Wolf sums the matter up very tersely (p. 80 of printed, p. 150 MS. record) in answer to a question, thus: "There has been a general stagnation in the real estate market." Q. "That is very marked this Spring (1870)?" A. "Yes, sir." Q. "And it was more marked in 1869 than in 1868?" A. "Yes, sir." Q. "And the market was not as buoyant in 1868 as in 1867, was it?" A. "Well, in 1868 we did a large real estate business. There was a large amount of property transferred in that year. In 1867

it was duller [it is plain from the context that this should be 1869], and in 1870 it was duller than it was in 1869."

Mr. Lucas testified that property had declined in 1869 from the rates of 1868, and he adds that this decline was, in his judgment, unreasonably great; that people were more scared than they need have been by the prospect of approaching specie payments in the Spring of 1869. That when people suffer from a panic, they allow their fears to domineer them to an unreasonable degree, is familiar to all observers of such things; but we are not concerned with the rational cause of the decline in the price of real estate in 1869, but with the fact itself. A cause is given, and we are told that it was unduly potent. This only goes to show what defendant contends for, *i. e.*, that the price of real estate was unduly depressed in St. Louis in that year.

This depression would, of course, be most conspicuous in the *margin* of encumbered property. It surely cannot be necessary to illustrate this by reference to the manner in which the depression of property, notably of *stocks, eats up the margin* of the speculator and forces him to put up an additional margin, or see his broker sell, and consume the margin already put up.

To return to Leffingwell. He tells us that in 1868, Cotting would have given $3,000 per front foot for the south-west corner of 4th and Olive, and he *infers* that he would have given as much for the south-east corner of 5th and Olive. Admitting the *facts* to be as stated by this witness here (a pretty large concession, after what we have seen), let us examine his *inference.* We have seen that every witness considers 4th street to be more valuable than 5th street; and one, whom many of St. Louis will consider the best informed and judicious of all who have testified on this head, declares that 4th street, between Chestnut and Washington Avenue, is at present 50 per cent. more valuable than 5th street between the same limits. I refer to John G. Priest, whose testimony is at p. 159 printed record. The whole of the testimony of this witness will well repay perusal, for, unlike most of the other real estate men, he has both memory and judgment, as well as a large experience in business of the most important character,

from which to make his deductions. This evidence of Priest's in which Wolf concurs, disposes of one, and that the chief, of Mr. Leffingwell's inferences.

Secondly, Cotting wanted a naked lot on which to erect a peculiarly handsome store (p. 77 of printed record). He wished for this purpose 90 feet on 4th street. We see that Cotting saw Darby and talked with him. They couldn't agree as to terms. Darby was anxious to sell and wrote to Cotting at New York, after talking with him here (p. 65 of the printed record). Darby was, during the last year of his business, anxious to sell his property; and any one who would have given him a cash margin of more than $50,000, was certain to get it. His *asking* price was $75,000, *i. e.*, he fixed the whole price at $225,000. What did Cotting offer him? Darby was trying to sell the property through various agents and by his own exertions, for many weeks ("a month or more" are his words). We do not know that he got any offer from Cotting, but after trying every where else, he was glad to sell to Lucas, and was advised by his best friend to do this. Cotting could not then have offered him $225,000 or indeed $201,000 for the property. Either, then, Cotting considered the building on it as a positive drawback, or he wanted a lot on 4th street, and not on 5th, or Mr. Leffingwell is mistaken in supposing that he was willing to give $3,000 per foot for a lot *anywhere*. The plaintiff may take his choice. Here is a tri-lemma and one or more of its fatal points will infallibly impale Mr. Leffingwell's credit as a witness. I do not mean to impugn his good faith at all, but his capacity to collate facts and draw inferences from them. His zeal in *bulling* the real estate market completely blinds his judgment. Indeed, it is known to naturalists that when a *bull* charges, he erects his tail, lowers his head and shuts his eyes.

Another witness (Mr. Wolf) who testified very positively, but not so much so as Mr. Leffingwell, referred to the sale of the property of the Centenary Church, on Fifth street, to Roe & Copelin (I refer to p. 81). He persisted against admonition, and warning, in fixing the date of this sale in November, 1869. his memory being perhaps influenced by the interruption and

suggestion rather irregularly made to that effect, by plaintiff's counsel. He stated the number of feet on Fifth street, to be 87 or 88 feet, by a depth on Locust of 127½ feet ; and his memory of the sale was that the price was between $2,400 and $2,500 per front foot on Fifth street. From these *facts* he drew his inferences.

But *facts* are not kind to the plaintiff's witnesses. Indeed, there seems to be on their part, scarcely a "speaking acquaintance" with facts. Instead of this property being sold in November, 1869, it was sold in October, 1868. Instead of the front on Fifth street being 87 feet, it was 64½, thus making a larger proportion of it corner property. Instead of the naked ground selling for $2,400 or $2,500, the lot *and* improvements sold for $2,201 per foot. As to the proportion which the building (a church) bore to this total, we have only this means of judging, viz. : that Roe & Copelin instead of pulling the house down, saw their account in fitting it up and renting it as an immense store. Now these men were not straitened for means to improve ; for Erskine tells us that the junior of them, after Roe's death, outbid every one else at the cash sale for the property of Jones on Fifth street, north of Olive (p. 90) ; and Erskine, a man worth fully a million dollars, speaks of Copelin's superiority over him in the command of ready money. Copelin then must have considered the building suitable to the lot. It is certainly a modest estimate that it was worth, at least $22,000. This would leave for the naked ground $120,000, or $1,860 per front foot, which, considering the price at which property similarly situated is known to have been leased, is perhaps the real figure. But this was in 1868, not 1869.

At $1,900 per front foot, the naked ground at the s. w. corner of Olive and Fifth streets, would be worth $142,500. It is impossible to believe that the building on it, no matter what it cost, adds, in the estimate of the whole property, $57,500 to the value of the naked land. A business house must not only be well constructed, but something like a spirit of prophecy must have inspired its designers, if, being built when business is in a state of transition, it is capable of adding 50 per cent. of its *cost* to the whole value of the property at the end of ten years.

John G. Priest and Sullivan Blood, men of experience and property-holders, when they heard that Mr. Lucas had bought this property, and understood the price he had paid, thought he had paid full price for it ; and Mr. Blood tells us that this was also the opinion of the whole Board of Directors of the Boatmens Savings Institution. We do not learn whether Mr. Lucas was present at this areopagus. If he was, and can be supposed to have influenced the expression of opinion, the testimony is stronger still. At the time no one of this Board expected the bankruptcy of Darby ; and generally a man (especially a rich man) is flattered rather by being told that he has made a good bargain, than that he has paid full value for his acquisition. I look upon this expression of opinion on the part of that Board as very strong. It may be said, that if the rest of that Board were like Mr. Blood and Mr. Lucas, they were elderly and cautious men. May be so. But they were also monied men ; the *only* class of men from amongst whom a *possible* purchaser of such property as this could come. It really does not matter a single pin what may be thought of the value of property by persons who can be neither sellers or buyers. It is only the men who have the means and the disposition to buy, that create a demand and prevent a sacrifice of property; and the competitors for property whose value is in the neighborhood of a quarter of a million of dollars are very few.

One of the witnesses of the plaintiff, whose testimony is to be found at p. 85, and following, of the printed record, testified with much zeal and some temper. But he is, though rather a heated, a sensible man, and tells us some things which it is well to remember. He says that if *he* had owned the property in question, no one could have bought it for $3,000 per foot—*i.e.* $225,000 would not have bought it (p. 86). But, being asked how much he, not owning it, would have given for it, he replied (p. 90), "That is a different question altogether. Understand me—if I owned the property all clear, and everything paid upon it, *no man could buy it ;* but when you come to buy a piece of property like this, it takes a great deal of money, and few men are prepared to make the purchase. It is brought to sale under

suggestion rather irregularly made to that effect, by plaintiff's counsel. He stated the number of feet on Fifth street, to be 87 or 88 feet, by a depth on Locust of 127½ feet; and his memory of the sale was that the price was between $2,400 and $2,500 per front foot on Fifth street. From these *facts* he drew his inferences.

But *facts* are not kind to the plaintiff's witnesses. Indeed, there seems to be on their part, scarcely a "speaking acquaintance" with facts. Instead of this property being sold in November, 1869, it was sold in October, 1868. Instead of the front on Fifth street being 87 feet, it was 64½, thus making a larger proportion of it corner property. Instead of the naked ground selling for $2,400 or $2,500, the lot *and* improvements sold for $2,201 per foot. As to the proportion which the building (a church) bore to this total, we have only this means of judging, viz.: that Roe & Copelin instead of pulling the house down, saw their account in fitting it up and renting it as an immense store. Now these men were not straitened for means to improve; for Erskine tells us that the junior of them, after Roe's death, outbid every one else at the cash sale for the property of Jones on Fifth street, north of Olive (p. 90); and Erskine, a man worth fully a million dollars, speaks of Copelin's superiority over him in the command of ready money. Copelin then must have considered the building suitable to the lot. It is certainly a modest estimate that it was worth, at least $22,000. This would leave for the naked ground $120,000, or $1,860 per front foot, which, considering the price at which property similarly situated is known to have been leased, is perhaps the real figure. But this was in 1868, not 1869.

At $1,900 per front foot, the naked ground at the s. w. corner of Olive and Fifth streets, would be worth $142,500. It is impossible to believe that the building on it, no matter what it cost, adds, in the estimate of the whole property, $57,500 to the value of the naked land. A business house must not only be well constructed, but something like a spirit of prophecy must have inspired its designers, if, being built when business is in a state of transition, it is capable of adding 50 per cent. of its *cost* to the whole value of the property at the end of ten years.

John G. Priest and Sullivan Blood, men of experience and property-holders, when they heard that Mr. Lucas had bought this property, and understood the price he had paid, thought he had paid full price for it; and Mr. Blood tells us that this was also the opinion of the whole Board of Directors of the Boatmens Savings Institution. We do not learn whether Mr. Lucas was present at this areopagus. If he was, and can be supposed to have influenced the expression of opinion, the testimony is stronger still. At the time no one of this Board expected the bankruptcy of Darby; and generally a man (especially a rich man) is flattered rather by being told that he has made a good bargain, than that he has paid full value for his acquisition. I look upon this expression of opinion on the part of that Board as very strong. It may be said, that if the rest of that Board were like Mr. Blood and Mr. Lucas, they were elderly and cautious men. May be so. But they were also monied men; the *only* class of men from amongst whom a *possible* purchaser of such property as this could come. It really does not matter a single pin what may be thought of the value of property by persons who can be neither sellers or buyers. It is only the men who have the means and the disposition to buy, that create a demand and prevent a sacrifice of property; and the competitors for property whose value is in the neighborhood of a quarter of a million of dollars are very few.

One of the witnesses of the plaintiff, whose testimony is to be found at p. 85, and following, of the printed record, testified with much zeal and some temper. But he is, though rather a heated, a sensible man, and tells us some things which it is well to remember. He says that if *he* had owned the property in question, no one could have bought it for $3,000 per foot—*i.e.* $225,000 would not have bought it (p. 86). But, being asked how much he, not owning it, would have given for it, he replied (p. 90), "That is a different question altogether. Understand me—if I owned the property all clear, and everything paid upon it, *no man could buy it;* but when you come to buy a piece of property like this, it takes a great deal of money, and few men are prepared to make the purchase. It is brought to sale under

very great disadvantages, for instance, that Jones' property; therefore, a man who happens to have the money, like Mr. Copelin, has a great advantage over his neighbors."

Q. "When Mr. Copelin bought this property of Jones, near the corner of Olive and 5th streets, the sale was a public one, was it not?" A. "I believe so." Q. "Do you not know it?" A. "Well, I saw it in the paper, and have every reason to believe it was a public sale, but I did not attend the sale." Q. "What would you have given for this property in 1869?" A. "I would not have bought it, for I was in no condition to buy it." The witness then becomes quite irritated at the inquiry into his means, and admits that he is worth more than $800,000, but will not say (as the world does) that he is worth more than a million of dollars. He plainly shows his fears of being some day taxed as the owner of such a fortune. Of course, the question was not dictated by idle curiosity. The idea of the cross-examining counsel was that, if a man worth, in the neighborhood of a million of dollars (and with his means remarkably well in hand), was not in a condition to purchase, or to compete for the purchase of such property as this, there is but one conclusion, viz: that the number of competitors for such property is very small, and that such men even as Greene Erskine do not influence its price in the market. If he *had* it, indeed, he would hold it with exemplary tenacity, and, to use his own words, "*no man could buy it.*" But, when Darby had it, he was in no condition to purchase, and had nothing to say to those who wished to sell.

I wish to say here, that I respect the integrity of Erskine; his veracity in saying this. He was evidently angry at the questions by which he was pressed, and the purport of which he did not understand. It would have been tempting to some natures to make an answer to the question (on p. 90 of printed, p. 169 of MS. record) that would have disconcerted the questioner. He does not do this, however, but answers candidly and sensibly.

One remark respecting the testimony of Mr. Darby, and I have done with the question of value. I refer to p. 64, and fol-

lowing of printed record. He had said that he had placed this property in Mr. Hodgman's hands for sale, and offered to pay, and did pay him, a commission for selling it. He says that he was told by Hodgman, that he was offering it to others; and Darby adds, that he, himself, talked to several with a view to a sale, but got no encouragement about buying it; and being asked, whether it was his opinion that at the time he sold to Mr. Lucas, he could have got more in cash from any one in St. Louis (*to this question complainant's counsel objected, as incompetent and irrelevant*), he made the following significant and bitter replies: "I do not know whether I could or not. *After* it was sold though, then they came and said they would give me more for it." Q. "Who said so?" A. "Well, Mr. Polk told me he would give me more." Q. "Yes; and would have paid for a part in the debt which you owed him?" A. "He has told me *since* that he would give me the same amount of cash which Mr. Lucas did, and that he would have given me in his debt." Q. "Did he tell you that after it was over?" A. "Yes: I never made any proposition to him before. Then there were others who came around and talked. Fellows would say, 'Why I would have found you a man who would have given you so much more.'" Q. "They would have found a man?" A. "That there were men who would have given so much more. One man would say, for instance, 'why didn't you let me know? I would have given you more than that for it.'"

I think it is pretty clear what Mr. Darby thinks of such "fellows." The moment a thing is beyond one's reach, it is common for the unreflecting, or the not strictly veracious, to indulge largely in professions and boastings, which from the nature of the case are MADE SAFELY. All thinkers are aware that when a man has been debating anxiously the pros and cons of a certain line of conduct, and finally comes to a resolution which he makes irrevocable, that very moment, unless he be a man of unusual firmness, the objections to the decision he has reached rise up in magnified force, and often frighten him from his propriety. That course which he has placed beyond his power becomes at once clothed in most seductive colors. When these "fellows"

(as Mr. Darby contemptuously terms them) saw that a very valuable piece of property was at once and peremptorily taken from the market (for Mr. Lucas' grip of such things is as rigid as Mr. Erskine's), all its attractions brighten at once, and much loose talk is of course inevitable. One of the motives to this is the temptation, irresistible with many, of appearing at a cheap rate, wiser or more discerning than the rest of mankind, particularly wiser than their immediate rivals in business; and in the case of Mr. Polk, there may have been something of the moody creditor, who at such a moment does not nicely measure his words. What is certain is, that Mr. Polk made no such offer when there was a possibility of its being accepted. All that we hear is, that when the offer was a perfectly safe and idle one, it was valiantly made.

In conclusion, it is presumed it will hardly be contended that Mr. Knox knew he had been totally wrong about Darby's condition, and that in fact he had been insolvent since 1859 (for this and no less is the drift of his claim) at any time more than six months prior to his suspension: nay, that he knew it in April, 1869. If he *did* know this, then, besides the unaccountable continuance of his indorsements for Darby (which, involving another as it did, to wit, Judge Brotherton, cannot even be called generous and *self*-sacrificing), he was guilty of lending to Darby a fictitious credit generally, and in the case of the Boatmen's Savings Institution in particular, there was perhaps the foundation of an action of deceit (with a *scienter*), if he did not, upon the discovery of his mistake, seek out Mr. Blood, and impart to him his change of conviction. By the course of the evidence adduced, Mr. Knox certainly attempts to show not merely that Darby was insolvent in April, 1869, but that he had been insolvent for ten years before. Of course when Mr. Knox spoke to Mr. Blood, he was sincere; but, as he now contends (and we may admit, if we please), he was egregiously mistaken; and if at any time he discovered his mistake before its evil consequences were past remedy, he was bound in honor and conscience to warn those whom he had led into error. He was bound above all, to inform Mr. Blood, in order to protect his bank from the loss which, in their dealings

with Darby, their misplaced confidence in his statements would be so likely to cause. But nothing of this sort appears, and applying the maxim "*de non existentibus et de non apparentibus*, &c.," the plain result is, that in April, 1869, Knox did *not* consider Darby to be insolvent. Was he a fool for not so considering him? Was he guilty of such negligence in this opinion as to be chargeable with fraud, as the equivalent of *crassa negligentia?* *We* think not. But we cannot refrain from a little curiosity as to what *he* thinks of it. For upon infinitely less evidence of negligence or fraud he charges both most liberally upon Mr. Lucas! Let any one imagine how the echoes would have rung, if complainant's counsel had been able to produce a tithe of the evidence, that Mr. Lucas was either wilfully or stupidly blind to Darby's condition, which every detail of this action overflows with in respect of Mr, Knox! *We* have no difficulty in the matter. *We* say that the failure of Mr. Darby took every one by surprise, Mr. Knox included, and we may even add, Mr. Darby himself. But we would really like to hear an explanation of this difficulty from Mr. Knox's point of view.

I conclude by submitting:

1st. That Mr. Lucas did not believe, nor had he any reason to believe that Darby was in failing circumstances when he purchased this property in April, 1869.

2d. That the purchase was made in the usual and regular course of dealing in such matters.

3d. That the price paid was a fair one, being the highest which after many weeks' trial of the market could be obtained.

4th. That it was for other reasons and intrinsically, a full equivalent for the property.

5th. That Mr. Darby did not, when making the sale, contemplate any violation of the Bankrupt Act; did not believe himself to be insolvent, and did not expect to become a bankrupt.

6th. That it was, therefore, impossible for Mr. Lucas to have been privy or auxillary to such a violation.

All of which is respectfully submitted, by

THOMAS T. GANTT,
Of Counsel for James H. Lucas.